

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

JLM
IN THE MATTER OF THE)
APPLICATION OF PLAINS AND) CAUSE NO. PUD 201000075
EASTERN CLEAN LINE LLC, TO)
CONDUCT BUSINESS AS AN) ORDER NO. **590530**
ELECTRIC UTILITY IN THE STATE)
OF OKLAHOMA)

ORDER

This matter comes before the Oklahoma Corporation Commission (Commission or OCC) on recommendation from the Administrative Law Judge (ALJ) of a Revised Joint Stipulation and Settlement Agreement (Stipulation) in which some parties agree Plains and Eastern Clean Line LLC (Clean Line) should be considered a public utility in the State of Oklahoma. Oklahoma Gas and Electric Co. (OG&E) takes exception to the recommendation, arguing Clean Line does not fit the statutory definition of a public utility. OCC's Public Utility Division (PUD or Staff) declined to sign the agreement on the grounds that some provisions within the Stipulation are outside the Commission's jurisdiction.

INSTANT HEARING: August 24, 2011, in Courtroom 301, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Hearing on Exceptions to the Report of the Administrative Law Judge before the Commission *en banc*.

APPEARANCES: Jon W. Laasch and Cheryl Vaught, attorneys, *representing* Plains and Eastern Clean Line, LLC;
Robert G. Gum, attorney, *representing* Southern Great Plains Property Rights Coalition and Oklahoma Independent Petroleum Association;
Terry L. Stowers, attorney, *representing* Coalition of Surface and Mineral Owners;
Robert Scott, attorney, *representing* Novus Windpower, LLC;
Sean Denton and Erin E. Cullum, attorneys, *representing* Southwest Power Pool;
Curtis M. Long, attorney, *representing* ITC Great Plains, LLC;

Stephanie Houle, Kimber L. Shoop, and Patrick Shore, attorneys, *representing* Oklahoma Gas and Electric Co.; Thomas P. Schroedter, James D. Satrom, and J. Fred Gist, attorneys, *representing* Oklahoma Industrial Energy Consumers; William L. Humes, assistant attorney general, *representing* Office of the Attorney General, State of Oklahoma; and James L. Myles, deputy general counsel, *representing* Public Utility Division, Oklahoma Corporation Commission.

PROCEDURAL HISTORY

The Commission adopts the procedural history as set forth in the ALJ's report and recommendation filed June 30, 2011, attached as Exhibit A.

SUMMARY OF PARTIES' ALLEGATIONS

Applicant

Applicant Clean Line seeks (a) authority to operate as an electric transmission public utility in Oklahoma, (b) a finding that Clean Line is not subject to the Commission's ratemaking authority because such authority has been preempted by federal law and has been placed in the Federal Energy Regulatory Commission (FERC), and (c) a finding that Clean Line should be assessed a utility assessment fee for regulatory services on a case-by-case basis.

In the course of this cause, Clean Line has also taken the position that (d) Clean Line should be subject to future rules promulgated by the Commission for transmission-only utilities, and (e) until such rules are adopted, Clean Line should be required to file progress reports with PUD.

Clean Line presented witness testimony and other evidence to support its assertions.

Respondent

Respondent PUD agrees (a) Clean Line is a transmission-only public utility, (b) Clean Line's rates are regulated by FERC but such regulation does not preempt OCC from otherwise regulating Clean Line, and (c) the appropriate way to assess Clean Line is on a case-by-case basis at this time.

PUD also contends (d) Clean Line should be subject to future rules promulgated by the Commission for transmission-only utilities, and (e) until such rules are adopted, Clean Line should be required to file progress reports with PUD.

Staff presented witness testimony to support its assertions.

Intervenors

OG&E contends Clean Line (a) is not a public utility because its transmission line will not serve the Oklahoma public, (b) a determination of public utility status is not necessary for Clean Line to conduct business, and (c) such a determination could result in adverse unintended consequences, such as the public wrongly concluding that the Commission is actively regulating Clean Line.

OG&E did not present evidence to support its assertions but did cross-examine witnesses and made legal arguments in favor of its position.

Southwest Power Pool, Inc. (SPP) takes no position on the issues in this cause other than seeking Clean Line's assurance it will (a) build all projects in accordance with good utility practice, all applicable laws, and North American Electric Reliability Corporation (NERC) and SPP criteria; (b) coordinate its projects with SPP, and its members, to protect the reliability of the SPP system and to ensure that all projects comply with SPP's technical requirements; and (c) if Clean Line constructs alternating current (AC) lines and associated facilities, other than AC lines to connect to wind farms or other generators to its converter station or to connect its converter station to other utilities, those AC and associated facilities must be approved SPP projects arising from the SPP transmission planning processes and will be subject to the SPP tariff.

SPP did not present evidence.

ITC Great Plains also takes no position on the issues in this cause other than seeking Clean Line's assurance it will (a) build all projects in accordance with good utility practice, all applicable laws, and NERC and SPP criteria; (b) coordinate its projects with SPP, and its members, to protect the reliability of the SPP system and to ensure that all projects comply with SPP's technical requirements; and (c) if Clean Line constructs AC lines and associated facilities, other than AC lines to connect to wind farms or other generators to its converter station or to connect its converter station to other utilities, those AC and associated facilities must be approved SPP projects arising from the SPP transmission planning processes and will be subject to the SPP tariff.

ITC Great Plains did not present evidence.

The positions of intervenors Southern Great Plains Property Rights Coalition; Oklahoma Independent Petroleum Association; Coalition of Surface and Mineral Owners; Novus Windpower, LLC; and the Attorney General, State of Oklahoma have been fluid, but all now agree with the stipulation discussed later in this order.

These intervenors did not present evidence, although some participated in cross-examination of witnesses.

Former intervenor Oklahoma Industrial Energy Consumers (OIEC) has withdrawn its intervention.

OIEC did not present evidence.

SUMMARY OF PARTIES' EVIDENCE

Only the Applicant and Staff presented evidence in this cause. Staff did not offer evidence contrary to Clean Line's evidence, and the Applicant did not offer evidence contrary to PUD's. Evidence relevant to this order, therefore, is simply set out in the findings of fact immediately below.

FINDINGS OF FACT

Preliminary Matters

1. Any conclusion of law stated in this order that should properly be included as a finding of fact is so included.
2. In keeping with Commission Order No. 58,000, notice of this cause was given by Clean Line in counties to be affected by Clean Line's project through publication in *The Alva Review Courier*; *Beaver Herald Democrat*; *Buffalo Harper County Journal*; *Enid News & Eagle*; *Guymon Herald*; *Medford Patriot Star*; *Shattuck Northwest Oklahoman*; *Tulsa World*; and *Woodward News* newspapers and in *The Oklahoman*, published in Oklahoma County. Proof of Publication, Nov. 19, 2010.
3. The Commission takes notice of its court record, showing all parties in this action appeared voluntarily.

Identification of Clean Line

4. Clean Line is an Oklahoma limited liability company owned, through an intermediate limited liability company, by Clean Line Energy Partners, LLC, a Delaware limited liability company. Direct Testimony of Mario Hurtado, July 16, 2010, p. 3, line 18, to p. 4, line 4 (Hurtado Direct).
5. Clean Line holds a certificate of good standing from the Oklahoma Secretary of State. Hurtado Direct, p. 3, lines 13-17.
6. Clean Line plans to build a bi-pole, high-voltage, direct current transmission line capable of transmitting 7,000 megawatts (MW) of power from the area of wind farms in western Oklahoma to the Arkansas-Tennessee border, with delivery of power to Tennessee. Direct Testimony of Dr. Wayne Galli, July 16, 2010, p. 4, lines 1-12 (Galli Direct); and Hurtado Direct, p. 4, lines 6-16.

Applicant's Managerial and Technical Ability

7. Clean Line's vice president for technical and transmission services holds bachelor's, master's and doctoral degrees in electrical engineering; has more than 12 years electrical engineering experience with SPP, NextEra Energy Resources and Southern Company Services; and has held academic positions in the field of electrical engineering at Virginia Commonwealth University. Galli Direct, p. 2, lines 3-22.
8. Clean Line's lead developer for Clean Line's project in Oklahoma has more than 15 years experience developing and managing power plants and electrical and natural gas infrastructure for Globeleq, Reliant Energy and Duke Energy in the United States, Central America, the Caribbean and Europe, including development of the 550-MW McClain Plant in Central Oklahoma. Hurtado Direct, p. 1, lines 1-10, and p. 2, line 6, to p. 3, line 4.
9. Clean Line's president has about 20 years of experience in the renewable energy business, including leading development of Horizon Wind Energy in the United States, where he completed more than 12 wind energy projects involving some 10,000 MW of energy in various states. He also developed thermal, hydroelectric, biomass and wind energy projects for Energia Global in Central America. Direct Testimony of Michael Skelly, July 16, 2010, p. 4, lines 4-9 and lines 15-21 (Skelly Direct).
10. During Clean Line's president's tenure at Horizon, the company developed the Blue Canyon wind project in Oklahoma, a half-billion-dollar project currently producing 325 MW of energy. Skelly Direct, p. 5, lines 8-19.
11. Clean Line is working through SPP processes to develop plans for construction of its Oklahoma-to-Tennessee transmission line. Galli Direct, p. 7, line 12, to p. 8, line 9.
12. Clean Line Energy Partners, through another affiliate, is developing the Rock Island Clean Line, a \$2 billion, high-voltage transmission line connecting 3,500 MW of wind-generated power in Iowa, Nebraska and South Dakota with high-load areas in the Midwest. Hurtado Direct, p. 4, line 18, to p. 5, line 6.
13. The evidence indicates Clean Line has the technical expertise to operate as a transmission-only public utility in Oklahoma.

Applicant's Financial Ability

14. Clean Line's executive vice president was formerly chief financial officer for Horizon, the world's third largest wind developer, and has experience acquiring several billion dollars of financing. Skelly Direct, p. 17, lines 7-13.

15. Clean Line has secured capital necessary to complete initial development of the Oklahoma-to-Tennessee project. Skelly Direct, p. 16, lines 13-15.
16. Clean Line is financing its Oklahoma-to-Tennessee project in a matter similar to financing of the Blue Canyon project, with investment from venture capitalists. Skelly Direct, p. 5, lines 15-19, and p. 14, line 17, to p. 15, line 18.
17. Clean Line's financing for this project is coming in part from ZAM Ventures, which focuses on energy and energy-related investments, including renewable resources. Skelly Direct, p. 15, lines 4-9.
18. ZAM is a private family investment firm, investing in energy projects around the world, including OGX, an offshore Brazilian oil company; Athabasca Oil Sands Co., a Canadian oil sands developer; and various private oil and gas companies in Oklahoma, Texas, and Canada. Outside of the oil and gas arena, ZAM's investments include several energy biotechnology investments in the United States, a sugar-based ethanol business in Brazil, and Clean Line. Redacted Non-Confidential Testimony of Bryan Begley, July 16, 2010, p. 3, lines 1-18 (Begley Direct).
19. Clean Line's financing for this project is coming in part from the Zilkha family, which has invested hundreds of millions of dollars in the energy sector, including all of the equity in Horizon during that company's initial growth stage. Skelly Direct, p. 15, lines 4-5 and 10-13.
20. Equity markets have traditionally supported transmission projects, including more than \$200 million in 2003 for an 83-mile line in southern California, \$600 million in 2005 for a line from New Jersey to Long Island, \$500 million in 2008 for a 53-mile line under San Francisco Bay, \$550 million in 2008 for the Trans-Allegheny Interstate Line, and another \$800 million in 2010 for the Trans-Allegheny Interstate Line. Skelly Direct, p. 16, line 17, to p. 17, line 4.
21. ZAM intends to raise additional capital for Clean Line as the project progresses. Begley Direct, p. 6, lines 10-17.
22. The market for wind-generated electric power is enhanced by:
 - (1) the existence, in many states, of mandates to use renewable energy even in the absence of high quality wind resources, (2) proposed CO₂ [carbon dioxide] control programs which favor zero emitting wind power plants, (3) the renewable funding in the American Recovery and Reinvestment Act (ARRA) of 2009, (4) the federal Production Tax Credit ("PTC"), investment tax credit, and cash grant as incentives for renewable development, [and] (5)

the FERC NOI [notice of intent] of January 2010 on removing barriers to renewable and variable energy resources. . . .

Direct Testimony of Judah L. Rose, July 16, 2010, p. 8, lines 7-15 (Rose Direct).

23. The evidence indicates Clean Line has and/or can raise the financial resources necessary to operate as a transmission-only public utility in Oklahoma.

Potential Benefits

24. Clean Line's general mission is to connect renewable energy resources, including wind-powered electricity generation, to load centers with demand for renewable energy. In Oklahoma, Clean Line's specific mission is to connect wind-powered generation in western Oklahoma, southwestern Kansas, and the Texas Panhandle with the Tennessee Valley Authority service territory and other portions of the southeastern United States. Skelly Direct, p. 2, lines 5-18.
25. Current wind-powered generation in the United States is curtailed from producing its full potential by a lack of transmission capacity. The Clean Line project in Oklahoma will add wind transmission capacity that is expected to avoid curtailment of Oklahoma wind-power generation. Skelly Direct, p. 7, lines 2-10.
26. America's current transmission grid is inadequate to transport power from current and expected wind-generation projects. This inadequacy is a significant obstacle to development of new wind farms. Skelly Direct, p. 8, line 15, to p. 9, line 2; Begley Direct, p. 4, line 19, to p. 5 line; and Rose Direct, p. 15, lines 1-23.
27. With development of more transmission facilities, in-state wind projects will be stimulated and Oklahoma can be a substantial exporter of electricity generated by wind resources. Begley Direct, p. 5, lines 4-15.
28. Clean Line's 7,000 MW line is expected to stimulate development of power plants employing renewable resources in western Oklahoma and surrounding areas. Skelly Direct, p. 12, lines 8-15.
29. The Clean Line project will be an "economic provider for Oklahoma since so many industries that support wind development and operations are based in Oklahoma. In addition, the Project will create jobs to construct and operate the transmission lines and wind power plants that the project facilitates." Rose Direct, p. 9, lines 7-13.
30. The Clean Line project "will both enable substantial wind farm development and will lead to ongoing economic effects (operations and maintenance of the transmission and wind generation facilities and the benefits of improving fuel diversity)." Direct Testimony of M. Ray Perryman, July 16, 2010, p. 3, lines 3-6, p. 6, lines 7-13, and p. 14, lines 1-10 (Perryman Direct).

31. The Clean Line transmission line should lead to development of approximately 3,200 MW of additional wind-generation capacity, leading to an economic impact in Oklahoma of \$12.277 billion in total expenditures, \$6.009 billion in gross product, \$4.099 billion in personal income, \$1.542 billion in retail sales, and 75,502 person-hours of employment. Perryman Direct, p. 14, lines 12-19, and p. 15, lines 6-13.
32. Clean Line's Oklahoma project and additional projects are expected to enhance the United States' energy independence through fuel diversity and hence national security. Skelly Direct, p. 12, lines 16-19; and Perryman Direct, p. 10, lines 12-17.
33. It serves the public interest of Oklahoma and the nation to enhance transmission grid reliability and improve overall power system economics by expanding transmission infrastructure. Clean Line's project helps to accomplish these interests. Rose Direct, p. 8, line 18, to p. 9, line 5.
34. Electricity moving along the direct current line can be converted to alternating current and used in Oklahoma or elsewhere in the SPP to enhance grid reliability in emergency situations. Transcript of Proceedings (Transcript), March 1, 2011, p. 75, lines 4-22; p. 83, line 20, to p. 84, line 5; p. 136, line 18, to p. 138, line 4; p.; 141, line 8, to p. 143, line 2; Transcript, March 2, 2011, p. 14, lines 17-25; and Rose Direct, p. 9, lines 2-3.

Regulation of Clean Line

35. Clean Line's interconnection with the Southwest Power Pool will be overseen by SPP. Transcript, March 1, 2011, p. 220, lines 7-23.
36. Declaring Clean Line a public utility allows the Commission to exercise some regulatory oversight of the company, including subjecting Clean Line to transmission-only rules currently being drafted and receiving semi-annual progress reports on Clean Line's progress in building its transmission lines and other reports as they are determined to be needed by PUD. Responsive Testimony of Joel Rodriguez, August 31, 2010, p. 7, lines 9-11; p. 9, lines 9-16; and p. 12, lines 5-9 (Rodriguez Response).
37. The semi-annual reports from Clean Line should include:
 - [Identity of] which energy resources are interconnected through the Hitchland substation and those directly connected to. . . Clean Line's converter station;
 - Status reports [on] the interconnection proposal with the SPP;

- Progress of the transmission route selection that Clean Line will utilize;
- The number of Oklahoma employees utilized during construction;
- The number of Oklahoma employees utilized after construction;
- Actual annual property or [a]d [v]alorem tax assessed [on] Clean Line;
- Cost benefit analysis of the Oklahoma transmission portion; and
- Environmental and [w]ildlife impact reports.

Rodriguez Response, p. 10, line 12, to p. 11, line 5.

38. Clean Line's rates and charges for interstate transmission will be regulated by FERC. Rodriguez Response, p. 7, lines 16-18.
39. PUD believes Clean Line should be considered a transmission-only public utility. Rodriguez Response, p. 7, lines 8-9.
40. Because Clean Line does not currently have Oklahoma customers or gross operating revenues, the appropriate regulatory services fee for the company is the fee found at Oklahoma Administrative Code (OAC) 165:5-3-30 to 34. Rodriguez Response, p. 8, lines 1-11.
41. Staff recommends approval of Clean Line's request to:
 - (1) operate as a transmission-only public utility in Oklahoma;
 - (2) not be subject to the Commission's ratemaking authority; and
 - (3) be subject to [a]ssessments. . . as described in OAC 165:5-3-30 *et seq.*

Responsive Testimony of Brandy Wreath, February 28, 2011, p. 6, lines 14-18 (Wreath Response).

42. Staff also recommends Clean Line be subject to any future rules promulgated by the Commission for transmission-only public utilities, and that until such rules are adopted, Clean Line required to provided semi-annual progress reports and other

reports as requested from time-to-time by PUD. Wreath Response, p. 6, line 18, to p. 7, line 2.

43. Staff also recommends the Commission not adopt any order that grants relief associated with the authority to exercise eminent domain, condemnation, siting, or project-specific approval, as these issues are outside the Commission's currently enabled jurisdiction in regards to Clean Line. Wreath Response, p. 7, lines 4-8.

Revised Stipulation and Settlement Agreement

44. On or about February 28, 2011, Applicant Clean Line and intervenors Southern Great Plains Property Rights Coalition, Coalition of Oklahoma Surface and Mineral Owners, Attorney General of the State of Oklahoma and Novus Windpower, LLC, (Signatory Intervenors) entered into the Stipulation attached as Exhibit B. Revised Joint Stipulation and Settlement Agreement (Exhibit B), p. 1, Article I, lines 4-9, and signature pages; and Transcript, March 1, 2011, p. 7, lines 8-19.
45. On or about February 28, 2011, intervenors SPP and ITC Great Plains, LLC, agreed only to Article III, §A(4)(a) of the Stipulation but also did not oppose any remaining portion of the agreement. Exhibit B, p. 1, Article I, lines 4-9, footnote 1, and signature pages; and Transcript, March 1, 2011, p. 7. Line 20, to p. 8, line 10.
46. Stipulation Article III, §A(4)(a) provides Clean Line will:
- design and build all projects in accordance with good utility practice, all applicable laws, and North American Electric Reliability Corporation and Southwest Power Pool, Inc. ("SPP") criteria. Clean Line will coordinate its projects with SPP, and its members, to protect the reliability of the SPP system and to ensure that all projects comply with SPP's technical requirements. If Clean Line constructs alternating current (AC) lines and associated facilities, other than AC lines to connect to wind farms or other generators to its converter station or to connect its converter station to other utilities, those AC and associated facilities must be approved SPP projects arising from the SPP transmission planning processes and will be subject to the SPP tariff.
47. By the Stipulation, Signatory Intervenors withdraw all objections to (a) Clean Line being determined to be a "public utility" and (b) the Commission having general supervisory jurisdiction over Clean Line. Exhibit B, Article III, § A(1).
48. The Signatory Intervenors and Clean Line agree a Commission finding that Clean Line is a public utility has no bearing on (a) whether Clean Line can or may exercise eminent domain powers, (b) whether Clean Line's transmission facility

constitutes a public use for eminent domain purposes, (c) whether the facility has any public benefit for eminent domain purposes, or (d) private property rights. Exhibit B, Article III, § A(1).

49. The Signatory Intervenors and Clean Line agree the configuration of Clean Line's project subjects the transmission line to FERC regulation of rates and terms and conditions of service. Exhibit B, Article III, § A(3).
50. In addition, the Signatory Intervenors and Clean Line agree Clean Line will be subject to OCC regulation applicable to transmission-only electric utilities, and Clean Line will provide PUD with;
 - (i) [A] list of energy resources that are directly connected to Clean Line's converter station,
 - (ii) [P]rogress of the transmission route that Clean Line will utilize;
 - (iii) [T]he number of employees utilized in Oklahoma during construction. . . ;
 - (iv) [A]ctual annual property or Ad Valorem tax assessed to Clean Line; and
 - (v) [A]ny studies or other information regarding the interconnection of Clean Line with SPP provided by SP[P].

Exhibit B, Article III, § A(4)-(5).

51. A separate private Settlement Agreement has been entered into by Clean Line and certain intervenors. That agreement is not before the Commission. Exhibit B, Article III, § A(6).
52. Neither the respondent Public Utility Division nor intervenor Oklahoma Gas and Electric Co. agreed to any part of the Stipulation. Exhibit B, Article I, lines 9-12; and Wreath Response, p. 5, lines 9-11.

CONCLUSIONS OF LAW

Preliminary Matters and Jurisdiction

1. Any finding of fact stated in this order that should properly be included as a conclusion of law is so included.
2. The Oklahoma Corporation Commission is a body of limited jurisdiction. *May Petroleum, Inc. v. Corporation Comm'n*, 1982 OK 51, ¶ 3, 663 P.2d 716, 716.

3. The Commission has subject matter jurisdiction of this cause as it relates to the determination of whether Clean Line is a public utility. OKLA. CONST. Art. 9, §§ 18 and 34; and 17 OKLA. STAT. §§ 152 and 153.
4. OCC does not have subject matter jurisdiction to determine whether Clean Line may exercise the power of eminent domain in any instance. Such jurisdiction rests with the district courts. OKLA. CONST. Art. 2; § 24, OKLA. CONST. Art. 9, § 18; 27 OKLA. STAT. § 7; and 66 OKLA. STAT. § 53.
5. The Commission does not have subject matter jurisdiction to decide issues of private property rights related to any potential exercise of eminent domain. Such jurisdiction rests with the district courts. *Id. and see Samson Resources Co. v. Oklahoma Corp. Comm'n*, 1993 OK CIV APP 67, ¶ 10, 859 P.2d 1118, 1120.
6. The Commission has personal jurisdiction of the parties in this cause. OKLA. CONST. Art. 9, §§ 18 and 19; 17 OKLA. STAT. §§ 152 and 155, and *Harding & Shelton, Inc. v. Prospective Inv. and Trading Co., Ltd.*, 2005 OK CIV APP 88, ¶ 19, 123 P.3d 56, 63.
7. Proper notice of this cause has been given. OKLA. CONST. Art. 9, § 18.
8. Although OCC supervises, regulates and controls utilities generally and issues certificates of convenience and necessity for telecommunications utilities specifically, the Commission does not issue certificates, licenses or permits to any entity to serve as an electricity-related utility in the State of Oklahoma. OKLA. CONST. Art. 9, §§ 18 and 34; and 17 OKLA. STAT. §§ 131-133 and 151-157.

Definition of Public Utility

9. For purposes of this cause, a public utility is any:

corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns. . . ***that now or hereafter may*** own, operate, or manage any plant or equipment, or any part thereof, ***directly or indirectly, for public use***, or may supply any commodity to be furnished to the public. . . [f]or the production, ***transmission***, delivery or furnishing [of] ***electric current*** for light, heat or power.
- 17 OKLA. STAT. § 151. (Emphasis added.)
10. “Public use” is not defined in Section 151, and the term is not defined in other portions of the Oklahoma Statutes or the Oklahoma Constitution.

11. The closest the Legislature has come to defining “public use” is its definition of “public use airport,” which is defined as, “a structure or an area of land or water that is designed and set aside for the landing and taking off of aircraft, is utilized *or to be utilized* by and in the *interest of the public* for the landing and taking off of aircraft and is identified by the FAA as a public-use airport.” 3 OKLA. STAT. § 120.2(13). (Emphasis added.)
12. When construing a statute, the Commission ascertains the intent of the Legislature by giving words in the statute their plain and ordinary meaning, unless such meaning is contrary to the purpose of the statute taken as a whole. *Lumber 2, Inc., v. Illinois Tool Works, Inc.*, 2011 OK 74, ¶ 8, ___ P.3d ___, 2011 WL 2674868, *2.
13. The word “may” as used in the Legislature’s definition of “public utility” indicates likelihood or possibility. “May” expresses contingency, especially when used with the pronoun “that.” *The American Heritage College Dictionary*, 3rd ed., Houghton Mifflin Co.: Boston (1993).
14. An entity that now owns electricity transmission equipment and now transmits the entirety of the electricity running through its conductor to another entity that provides electric power to retail customers is a public utility. 17 OKLA. STAT. § 151; and see *Southern Okla. Power Co. v. Corporation Comm’n*, 1923 OK 939, ¶ 7, 96 Okla. 53, 220 P. 370, 372. (Entity that generated electric power and sold all of it on a wholesale basis to another entity that resold the power to retail customers is a public utility despite having no direct contact with the public.)
15. An entity that will foreseeably in the immediate future own electricity transmission equipment and will foreseeably in the immediate future transmit the entirety of the electricity running through its conductor to another entity that provides electric power to retail customers is a public utility. 17 OKLA. STAT. § 151.

Legislative Determination of Public Interest

16. As a matter of law, the Legislature has determined, “Oklahoma’s wind energy resources are an important asset for the continued economic growth of the state and for the provision of clean and renewable power to *both the people of the state and the nation as a whole*. . . .” 17 OKLA. STAT. § 160.12(1). (Emphasis added.)
17. As a matter of law, the Legislature has determined, “Promotion of the development of wind energy resources is important to the economic growth of the state. . . .” 17 OKLA. STAT. § 160.12(2).
18. As a matter of law, the Legislature has determined:

[I]t is in the **public interest** to promote the **development of a robust transmission grid** to facilitate delivery of renewable energy and improve reliability of the electric transmission system. It is further in the **public interest**, in cooperation with electricity transmission entities and the Southwest Power Pool, **to promote wind-energy development** in the state to the extent that the renewable energy generated from wind can be **utilized in every part of the state and exported to other states**.

17 OKLA. STAT. § 287(A).

19. As a matter of law, the Legislature has determined:

It is the goal of the State of Oklahoma to reduce the dependence of **Oklahoma and the United States** on foreign oil, to improve the security of the United States in the world and to improve the economic well-being of the citizens of Oklahoma. The Legislature hereby expresses its intent to take steps to increase the energy independence of the United States by increasing the use of domestic energy and renewable energy sources in Oklahoma, expand development of domestic energy and renewable energy production and **increase the ability to export** Oklahoma's domestic energy and **renewable energy resources to the rest of the United States**.

17 OKLA. STAT. § 801.2. (Emphasis added.)

20. "Citizens of Oklahoma" are also citizens of the United States and, therefore, part of the public comprising U.S. citizens. U.S. CONST. Art. 4, § 2, cl.1, and U.S. CONST. AMEND. 14, § 1.
21. National security constitutes a public use. *Mitchell v. Harmony*, 54 U.S. (13 How.) 115, 126, 14 L.Ed. 75 (1851).
22. As a matter of law, the Legislature has determined, "[I]t is in the **public interest** to promote renewable energy development in order to best utilize the abundant natural resources found in this state," including wind-generated electricity. 17 OKLA. STAT. § 801.4.
23. The terms "public interest," "public purpose" and "public use" may serve as synonyms. *Munn v. People of State of Illinois*, 94 U.S. (4 Otto) 113, 24 L.Ed. 77 (1876) and *Kelo v. City of New London, Conn.* 545 U.S. 469, 480, 125 S.Ct. 2655, 2662, 162 L.Ed.2d 439 (2005).
24. When the Legislature declares a "given use is a public use, that judgment will not be overturned by the courts, unless it is clearly apparent that the same is without

reasonable foundation.” *State v. Barnes*, 1908 OK 191, ¶ 15, 22 Okla. 191, 97 P. 997, 1000.

Commission Required to Define Public Use

25. For purposes of regulation, the Commission must define “public use” as it relates to the identification of a public utility in specific circumstances, but the Commission does not and cannot define “public use” as it relates to requirements for eminent domain. Definitions of the term for Commission regulatory purposes may differ in some regards from a definition for district court eminent domain purposes. OKLA. CONST. Art. 2, § 24; OKLA. CONST. Art. 9, § 18; 27 OKLA. STAT. § 7; and 66 OKLA. STAT. § 53.
26. Employing property or processes to further a legislatively identified public interest is a public use for purposes of determining whether an entity is a public utility, regardless of whether such employment is or is not a public use for eminent domain purposes.

Fees and Other Regulation

27. Clean Line’s rates and charges for interstate transmission of electricity will be regulated by FERC. 16 U.S.C.A. § 824.
28. OCC is not preempted by federal law from regulating Clean Line regarding non-tariff matters. *Id.*
29. The normal assessment fee for electric utilities is based on a formula taking into account Oklahoma customers and gross operating revenues. 17 OKLA. STAT. § 180.11; OAC 165:5-3-22(a)(1).
30. Because Clean Line does not currently have Oklahoma customers or gross operating revenues, it is fair, just, and reasonable for Clean Line to pay a regulatory services fee or assessment on a case-by-case basis. OAC 165:5-3-32.

ORDER

1. THE COMMISSION THEREFORE ORDERS OCC shall consider Clean Line an electricity transmission-only public utility in Oklahoma.
2. THE COMMISSION FURTHER ORDERS Clean Line’s project as currently configured shall not be subject to rate regulation by the Commission but shall be subject to transmission-only public utility rules and procedural rules as they now or hereafter may exist.
3. THE COMMISSION FURTHER ORDERS Clean Line shall be subject to fee assessment as set forth in OAC 165:5-3-30 through 34.

4. THE COMMISSION FURTHER ORDERS commencing 60 days from the date of this order, Clean Line shall file, on a semi-annual basis, a cause with the Commission and in that cause shall file a report containing:
 - a. A list of energy resources that are directly connected to Clean Line's converter station,
 - b. Information on progress of the transmission route that Clean Line will utilize;
 - c. Information on the number of employees utilized in Oklahoma during construction;
 - d. Information on the actual annual property or ad valorem tax assessed against Clean Line; and
 - e. Any studies or other information regarding the interconnection of Clean Line with SPP provided by SPP.
5. THE COMMISSION FURTHER ORDERS Clean Line shall file with the Commission a report detailing any agreement between Clean Line and another jurisdiction or any action taken by another jurisdiction that affects the Oklahoma-to-Tennessee line within 10 business days of the agreement or action. Such report shall be filed in a cause before the OCC, which the Commission may use to consider whether any changes should be made to this order or whether any other action is required to protect or promote Oklahoma's public interest.
6. THE COMMISSION FURTHER ORDERS Clean Line shall provide such other reports as the Public Utility Division shall require from time to time.
7. THE COMMISSION FURTHER ORDERS Article III, §A of the Joint Stipulation and Settlement Agreement is approved and that other matters in such Stipulation are either outside the jurisdiction of the Commission or are matters of private agreement between or among the parties and of no concern to the Commission.
8. THE COMMISSION FURTHER ORDERS Clean Line shall prepare and submit to the Commission within 60 days of the date of this order a plan detailing the procedure it will use in the event any project it undertakes in Oklahoma is abandoned before, during, or after construction, or is later decommissioned, to assure safeguards are in place to ensure Clean Line will be responsible for any abandonment or decommissioning of lines or facilities
9. THE COMMISSION FURTHER ORDERS that if within six years of the date of this order Clean Line has not constructed a project, or if any project it is constructing at such time is non-operational, Clean Line shall submit to the

Commission a report on the status of the project and any future plans to conduct business in Oklahoma.

10. THE COMMISSION FURTHER ORDERS all pending motions in this cause are made moot by this order and are therefore denied.

LIMITATION OF ORDER

1. This Order does not confer the power of eminent domain on the Applicant, Clean Line, and the Commission disclaims any intent to do so. The Applicant did not seek to have the Commission confer the power of eminent domain upon the Applicant; thus, the matter of eminent domain was not before the Commission in these proceedings. The Commission has not considered in any way whether the Applicant does or does not possess the power of eminent domain or is or is not entitled to exercise that power as to private property rights in Oklahoma, whether under the Oklahoma Constitution, Oklahoma Statutes, or otherwise. The Commission does not intend this order be preclusive in other proceedings as to whether Applicant possesses the power of eminent domain or a right to exercise such power.
2. This Order does not approve or disapprove any project Clean Line is now or will in the future build in Oklahoma or any other place.

CORPORATION COMMISSION OF OKLAHOMA

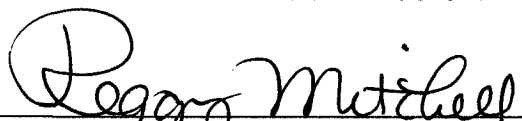

DANA L. MURPHY, Chair


BOB ANTHONY, Vice Chairman

PATRICE DOUGLAS, Commissioner

DONE AND PERFORMED THIS 28th DAY OF October, 2011.

BY ORDER OF THE COMMISSION


PEGGY MITCHELL, Commission Secretary

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA
COURT CLERK'S OFFICE — OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF PLAINS AND EASTERN CLEAN LINE LLC TO CONDUCT BUSINESS AS AN ELECTRIC UTILITY IN THE STATE OF OKLAHOMA))))))	CAUSE NO. PUD 201000075
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HEARING: March 1, 2, 3 and 4, 2011, in Courtroom 301 and Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Administrative Law Judge Jacqueline T. Miller

APPEARANCES: Cheryl A. Vaught and Jon W. Laasch, Attorneys *representing* Plains and Eastern Clean Line Oklahoma LLC
William J. Bullard, Kimber L. Shoop and Stephanie G. Houle Attorneys *representing* Oklahoma Gas & Electric Company
James L. Myles, Deputy General Counsel *representing* Public Utility Division Oklahoma Corporation Commission
William L. Humes and Elizabeth Ryan, Assistant Attorneys General *representing* Office of the Attorney General, State of Oklahoma
Curtis M. Long, Attorney *representing* ITC Great Plains, LLC
Robert G. Gum, Attorney *representing* Oklahoma Independent Petroleum Association and Southern Great Plains Property Rights Coalition
Terry Stowers, Attorney *representing* Coalition of Oklahoma Surface and Mineral Owners
Robert C. Scott, Attorney *representing* Novus Windpower, LLC
Sean Denton and Erin E. Cullum, Attorneys *representing* Southwest Power Pool, Inc.

REPORT AND RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE

SUMMARY OF ALJ RECOMMENDATIONS

After reviewing the record including testimony and exhibits filed in this Cause and the sworn testimony provided by witnesses at the Hearing on the Merits, the Administrative Law Judge recommends the Oklahoma Corporation Commission find as follows:

1. The Revised Joint Stipulation and Settlement Agreement ("attached hereto and incorporated by reference as "Attachment A") filed by the Stipulating Parties on February 28, 2011 should be approved.

EXHIBIT A

2. Plains and Eastern Clean Line Oklahoma LLC ("Clean Line") is a public utility as that term is defined by Okla. Stat. tit. 17, § 151, thereby subjecting it to this Commission's jurisdiction as found at Okla. Stat. tit. 17, §§ 152 and 153, except as preempted by federal law.
3. Clean Line possesses the financial, managerial and technical experience to build, own and operate transmission in Oklahoma.
4. Clean Line should be directed to work with the Commission and Commission Staff to determine what rules are applicable to transmission in Oklahoma and suitably applicable to Clean Line's operations.
5. Clean Line should be subject to any future rules promulgated by this Commission regarding transmission-only public utilities and that for the time being, and until rules are established, Clean Line should be required to provide semi-annual progress and other reports requested by Staff.
6. The Motion for Leave to File Suggestion of Additional Authority of the Oklahoma Independent Petroleum Association is moot due to the participation of the Oklahoma Independent Petroleum Association in the Revised Joint Stipulation and Settlement Agreement.
7. The Withdrawal of the Motions to Dismiss of the Oklahoma Independent Petroleum Association and Southern Great Plains Property Rights Coalition are granted; the withdrawal of the Coalition of Oklahoma Surface and Mineral Owners' joinder is granted; the withdrawal of respective protests is granted.
8. The Commission enter an Order (1) granting Clean Line authority to operate as an electric transmission-only public utility providing wholesale bulk electricity transmission services within the State of Oklahoma, (2) finding that Clean Line is not subject to the Commission's ratemaking authority because such authority has been preempted by the Federal Energy Regulatory Commission ("FERC"), and (3) finding that the assessment fees described at OAC 165:5-3-32 best suit and apply to Clean Line's transmission operations in Oklahoma.
9. The Commission find that Clean Line is a corporation that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public for the production, transmission, delivery or furnishing electric current for light, heat or power as required by § 151 for "public utility" status.
10. The findings of fact and conclusions of law set forth herein be adopted by the Commission.

I. PROCEDURAL HISTORY

Plains and Eastern Clean Line Oklahoma LLC ("Clean Line") filed its Application in this Cause on June 24, 2010, requesting that the Oklahoma Corporation Commission (the "Commission") issue an Order (1) granting Clean Line authority to operate as an electric transmission-only public utility providing wholesale bulk electricity transmission services within the State of Oklahoma, (2) finding that Clean Line is not subject to the Commission's ratemaking authority because such authority has been preempted by the Federal Energy Regulatory Commission ("FERC"), and (3) finding that the assessment fees described at OAC 165:5-3-32 best suit and apply to Clean Line's transmission operations in Oklahoma.

The Attorney General ("AG") entered an appearance on July 9, 2010, Oklahoma Gas & Electric ("OG&E") entered its appearance on August 3, 2010, ITC Great Plains ("ITC") filed its appearance on August 13, 2010, and Novus Windpower LLC ("Novus") filed its appearance on September 22, 2010. The Oklahoma Industrial Energy Consumers ("OIEC") filed a Motion to Intervene on June 30, 2010. An Order granting this intervention was issued on July 13, 2010. Southern Great Plains Property Rights Coalition ("SGPPRC") and Oklahoma Independent Petroleum Association ("OIPA") filed Motions to Intervene on September 21, 2010, and Coalition of Oklahoma Surface and Mineral Owners ("COSMO") filed its Motion to Intervene on September 22, 2010. Orders granting each of these Motions to Intervene were issued on November 10, 2010.¹

On July 1, 2010, Clean Line filed a Motion to Determine Procedural Schedule, which was initially heard on July 8, 2010. During the hearing on July 8, 2010, the Administrative Law Judge ("ALJ") in an oral recommendation directed Clean Line to file its Direct Testimony on July 16, 2010, as set forth in the proposed schedule attached to its Motion. On July 16, 2010, Clean Line filed the direct testimony of Mr. Judah L. Rose and Dr. M. Raymond Perryman, Dr. Wayne Galli, Mr. Mario Hurtado, Mr. Michael Skelly and Mr. Bryan Begley.

The Commission issued Order No. 577175 adopting a procedural schedule on July 22, 2010 and issued Order No. 577058 adopting a protective order on July 16, 2010. On August 16, 2011, the Motion to Assess Fees was filed by the Staff. On September 27, 2010 an Order to Assess Fees was issued, Order No. 578920.

On August 31, 2010, pursuant to the procedural schedule, the Oklahoma Corporation Commission Public Utility Division Staff ("Commission Staff", "Staff", "PUD") filed the Responsive Testimony of Mr. Joel Rodriguez, Independent Evaluator and Regulatory Analyst for the PUD. On that same date, OG&E, OIEC², ITC and the AG filed Statements of Position. Pursuant to Procedural Order No. 577175, Clean Line filed the Rebuttal Testimony of Mr. Michael Skelly on October 1, 2010. On October 6, 2010, Clean Line filed Responses to the Motions to Intervene of OIPA, SGPPRC and COSMO. Novus, COSMO, OIPA and SGPPRC

¹ Order Nos. 580265 (SGPPRC), 580266 (OIPA) and 580267 (COSMO).

² On February 24, 2011, counsel for OIEC filed a Notice of Withdrawal as Attorney of Record stating in part that OIEC no longer desired to participate in this proceeding.

filed Statements of Position on November 15, 2010. Clean Line filed Responses to the Statements of Position of COSMO, OIPA and SGPPRC on November 18, 2010.

On November 2, 2010, the Commission issued Order No. 580000 granting Motion to Approve Notice Requirements. On November 5, 2010, OIPA and SGPPRC filed Motions to

Dismiss for Lack of Jurisdiction and Brief in Support ("Motions to Dismiss"). The AG, Staff, ITC and Clean Line filed Responses to the Motions to Dismiss on November 15, 2010. OG&E filed a brief in support of the Motions to Dismiss on November 15, 2010. SGPPRC filed a Reply to the various Responses to its Motion to Dismiss on November 17, 2010. On November 17, 2010, Clean Line filed Responses to the Statements of Positions of OIPA and SCPPRC. Clean Line filed a Response to OG&E's Brief in Support of Motion to Dismiss on November 18, 2010.

On November 12, 2010, a prehearing conference was held and the parties filed and exchanged testimony summaries, exhibit lists and witness lists. On November 24, 2010, certain of the parties filed a Joint Stipulation and Settlement Agreement. On January 11, 2011, Southwest Power Pool, Inc. ("SPP") filed a Motion to Intervene. On January 12, 2011, SPP filed a Motion to Associate Counsel. SPP filed its Statement of Position on January 14, 2011. Order No. 582110 granting SPP's intervention was issued on January 19, 2011. Order No. 582109 granting Motion to Associate Counsel was issued on January 19, 2011.

On February 4, 2011, the OIPA filed a Motion for Leave to File Suggestion of Additional Authority; on February 22, 2011, Plains and Eastern Clean Line filed a Response. On February 23, 2011, the matter was heard and pursuant to the request of Clean Line and OIPA the Motion was taken under advisement by the ALJ. The Motion was later moot due to the OIPA's participation in the Revised Stipulation and Settlement Agreement.

On February 28, 2011, all of the parties except OG&E, and Commission Staff filed a Revised Joint Stipulation and Settlement Agreement (the "Revised Stipulation" attached hereto as "Attachment A"). On February 28, 2011, Clean Line filed the direct testimony of Mario Hurtado in support of the Revised Stipulation and Staff filed the Responsive Testimony of Brandy Wreath, Deputy Director of the PUD.

A Hearing on the Merits was held on March 1, 2, 3, and 4, 2011. On March 1, 2011 a Notice of Stipulation between Clean Line and OIPA was filed and OIPA filed its withdrawal of its Motion to Dismiss and its withdrawal of its protest to the relief requested by Clean Line. On March 1, 2011 a Notice of Private Rights Settlement Between Clean Line, SGPPRC and COSMO, a withdrawal of SGPPRC's Motion to Dismiss, a withdrawal of COSMO's joinder in SGPPRC's Motion to Dismiss and OIPA's Motion to Dismiss and a withdrawal of SGPPRC's and COSMO's protest of the relief requested by Clean Line were filed.

Public Comment was received in this proceeding in court, telephonically and in writing. A portion of the proceeding was also conducted *in camera*. In addition to any other matters referenced in the record³, the Commission considered Docket No. 10-041-U, In the Matter of the

³ Such as OAC 165:35; OAC 165:5.

Application of Plains and Eastern Clean Line LLC for a Certificate of Public Convenience and Necessity to Construct, Own and Operate as an Electric Transmission Public Utility in the State of Arkansas.

II. JURISDICTION

A. Commission Jurisdiction

The Commission has jurisdiction over the subject matter of this Cause and the parties hereto pursuant to Okla. Stat. tit. 17, §§ 151, 152 and 153 of the Oklahoma Statutes, Article IX, Sections 18 and 34 of the Oklahoma Constitution.

B. Notice

Notice of the hearing in this Cause was given pursuant to the requirements of the Commission as set forth in Order No. 58000. This notice complies with the Commission's Rules of Practice.

III. SGPPRC and OIPA's MOTIONS TO DISMISS FOR LACK OF JURISDICTION AND BRIEF IN SUPPORT

SGPPRC and OIPA filed Motions to Dismiss for Lack of Jurisdiction on November 5, 2010 ("Motions to Dismiss"), and argued that the transmission operations proposed by Clean Line do not fall within the "public utility" definition found at Title 17, Section 151 of the Oklahoma Statutes ("Section 151"). SGPPRC and OIPA argued in their respective Motions to Dismiss that Clean Line is not a "transmission company" as defined by Article IX, § 34 of the Oklahoma Constitution, and that Clean Line is not a "public utility" as defined in Okla. Stat. tit. 17, § 151. SGPPRC and OIPA also argued that even if Clean Line is determined to be a "public utility", any jurisdiction the Commission might have over Clean Line's Application is preempted in favor of the jurisdiction of the Federal Energy Regulatory Commission. SGPPRC and OIPA argued that the Commission has no jurisdiction over Clean Line's Application and that the Application should be dismissed without a hearing on the merits.

Clean Line, the AG, Staff and ITC filed Responses to the Motions to Dismiss on November 15, 2010. Clean Line maintained in its Responses that the Commission's jurisdiction is properly invoked, that "public utility" status for Clean Line is appropriate under the Commission's previous ITC order, and that the Commission's consideration of the Application should proceed. Clean Line argued that the issue of Clean Line's authority to operate as a transmission-only electric utility providing wholesale bulk electricity transmission services within the State of Oklahoma and whether or not Clean Line should be granted exemptions or waivers of certain regulations as applicable to a transmission-only utility business must be determined upon consideration of evidence presented at a proper hearing before the Commission.

The AG argued in its Response to the Motions to Dismiss that the Commission possesses the authority pursuant to Article IX, § 34 of the Oklahoma Constitution and Okla. Stat. tit. 17, § 151 to consider the elements that define a public utility or public service corporation and to

determine whether Clean Line meets that definition. According to the AG, "Such a determination comprises the very essence of what an agency such as the Corporation Commission is empowered to do and, indeed, does on a regular basis." The AG concluded that the Commission should deny the Motions to Dismiss for the reasons set forth in its Response.

Staff stated in its Response to the Motions to Dismiss that the express jurisdiction of the Commission "would certainly include the authority to determine if a corporation meets the criteria of a 'public utility' in the State of Oklahoma and that the Commission's ability to answer the question of whether Clean Line falls within the definition of "public utility" according to Oklahoma law is "without question" within the Commission's jurisdiction. Staff agreed that Clean Line's activities fall squarely within the definition of public utility as provided in Section 151, which states in part "every corporation" that "may own" "any plant or equipment" that is used "directly or indirectly" "for public use" and that relates to the "transmission" of "electric current" is a public utility. This conclusion is strongly supported by the Commission's previous order with respect to transmission-only utilities found in Order No. 559350 in Cause No. PUD 200700298, a nearly identical application filed by ITC for authority to operate as an electric transmission public utility providing wholesale bulk electricity transmission services within the State of Oklahoma.

On March 1, 2011 both OIPA and SGPPRC withdrew their respective Motions to Dismiss and any protest to the relief requested by Clean Line.

IV. OG&E'S BRIEF IN SUPPORT OF MOTIONS TO DISMISS

OG&E filed a brief in support of OIPA's and SGPPRC's Motions to Dismiss on November 15, 2010. Because OIPA and SGPPRC withdrew their respective Motions to Dismiss, OG&E did not offer its brief. March 1, 2011, Tr. p. mp-10, ln. 15-19.

A. SUMMARY OF PARTIES' ALLEGATIONS⁴/STATEMENT OF POSITION OF OKLAHOMA GAS AND ELECTRIC COMPANY

1. OG&E supports the development of wind energy projects in Oklahoma and has been a supporter of upgrading and expanding the transmission system in the Southwest Power Pool, Inc. ("SPP") to provide more reliable transmission service and access to wind energy for customers. OG&E does not however believe it is appropriate for this Commission to grant the relief requested by Clean Line. Specifically, in the application, Clean Line requests that the Commission grant "Clean Line authority to operate as an electric transmission public utility providing wholesale bulk electricity transmission service within the State of Oklahoma." OG&E's opposition to this relief is based on three general propositions: (A) the Commission lacks the authority to grant Clean Line's request; (B) the instant application is unnecessary for Clean Line to complete its proposed transmission project and conduct its business in Oklahoma; and (C) there are a series of adverse unintended consequences associated with the Commission granting this request.

⁴ The Statement of Position of OG&E.

Proposition A

2. The Commission has no authority to grant the above request because Clean Line's proposed transmission line will not affect the provision of electric service in the State of Oklahoma. Clean Line's project will essentially be a one way, non-stop highway from some unknown location in Texas, Oklahoma or Kansas to areas outside of Oklahoma. Clean Line's rates and operations will not be regulated by the Commission. In fact, there is no legally significant nexus between Clean Line's project and this Commission's regulatory mandate.

While the Commission's jurisdiction extends generally over public utilities,⁵ Oklahoma law defines "public utilities" as certain entities that "own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly for public use or may supply any commodity to be furnished to the public."⁶ As self-described in the application, Clean Line does not meet this definition of a public utility. Clean Line will not allow Oklahoma customers to use its transmission line to import wind energy from areas of Texas, Oklahoma and Kansas. The entire purpose of the Clean Line project is to send wind energy to load centers outside of Oklahoma. Because Clean Line's project will be a direct current ("DC") high voltage line, it will not be part of the synchronized SPP transmission system.⁷ Utilities and retail customers in Oklahoma will not be able to reserve space on Clean Line's transmission line for delivery into Oklahoma load centers. The Oklahoma public will not be able to use (directly or indirectly) Clean Line's line or access the commodity that Clean Line will be carrying.

It remains unclear how the Commission will be protecting the public interest by granting the relief requested by Clean Line. Will the Commission be ensuring that Oklahoma customer rates are just and reasonable? Will the Commission be regulating a specific service that will be made available to Oklahoma customers? Will the Commission be regulating Clean Line's operations, management and conduct of its business? OG&E believes that the answer to all these questions is a resounding "No." Clean Line is seeking to be a public utility in name only and will not be regulated in any specific or identifiable way by the Commission.

Proposition B

3. Clean Line does not contend that it needs to be recognized as a public utility in order to conduct business. OG&E believes that this application is superfluous, as Clean Line can construct and operate its project without any oversight by this Commission. In fact, OG&E is unable to identify any substantive provision in the Commission rules that would apply to a company like Clean Line and, consequently, confer upon the Commission the ability to regulate how Clean Line conducts business. Clean Line is seeking to "subject" itself to Commission jurisdiction, but has failed to explain why a "public utility" designation is of any legal significance. Clean Line does not need pre-approval of its project from the Commission. Nor does Clean Line need a Certificate of Convenience and Necessity or other siting approvals from the Commission. There is simply no finding from this Commission standing in Clean Line's way of constructing, owning and operating its project.

⁵ 17 O.S. §152 (2010).

⁶ 17 O.S. §151 (2010).

⁷ SPP's alternating current ("AC") transmission system needs a special interconnection with Clean Line's DC project.

Proposition C

4. OG&E believes that there is a danger of creating adverse unintended consequences by granting the relief requested by Clean Line. If the Commission grants the requested relief, the Oklahoma public (including Oklahoma electricity consumers, landowners and other groups) could wrongly conclude that the Commission is actively regulating Clean Line. Since the Commission will only be giving Clean Line a title of public utility without any specific regulatory oversight, such an implication of regulation could easily create confusion for the Oklahoma public. The Commission should be especially sensitive to this concern given recent legislative attempts to amend the definition of public utility. In the 2010 legislative session, Senate Bill 828, which would have amended the definition of "public utility" under 17 O.S. § 151 to provide that a transmission-only entity like Clean Line would be a public utility under the statute, was passed by both houses of the Oklahoma Legislature. The Governor vetoed the legislation with the following veto message: "This bill is not in the best interest of Oklahomans, particularly landowners. It essentially makes it easier for out-of-state companies, including non-public utility companies that contract with a public utility, to have eminent domain rights over the lands of Oklahomans. This is a major policy shift that will cost property owners in Oklahoma. It requires extensive study and deliberation and should not be enacted in the final days of the legislative session." While OG&E does not necessarily agree with the conclusions of the Governor's office regarding the potential impact on eminent domain rights, the debate surrounding SB 828 demonstrates the potential for confusion inherent in the relief requested by Clean Line.

5. OG&E does not intend to present witnesses on its behalf during the hearing on the merits in this proceeding. However, without limitation, OG&E reserves the right to cross-examine witnesses at the hearing on the merits, to amend this Statement of Position should new issues or information arise during the course of the proceeding and to take such other and further actions as OG&E deems necessary in this cause.

V. THE REVISED JOINT STIPULATION AND SETTLEMENT AGREEMENT

The Revised Stipulation was signed and agreed to in full by SGPPRC, COSMO, Clean Line, the AG, Novus and OIPA (the "Stipulating Parties"). SPP stipulated as to Article III, Section A.4.a of the Revised Stipulation only and took no position as to the remaining terms, conditions or agreements. ITC supported the provisions of the Revised Stipulation solely as set forth in Article III, Section A.4.a thereof, and did not oppose, but is not a party to, the remaining provisions of the Revised Stipulation.

Subject to the terms and provisions of the Joint Stipulation, the Stipulating Parties withdrew any objections to the Commission finding that Clean Line is a "public utility" as defined in Okla. Stat. tit. 17, § 151, and that the Commission has general supervisory jurisdiction over Clean Line pursuant to Okla. Stat. tit. 17, § 152. The Stipulating Parties agree that the Joint Stipulation is null and void if the Commission does not find that Clean Line is a public utility.

The Stipulating Parties further agreed that because this cause is not about individual private matters with property owners and their use and enjoyment of their vested property rights

which is reserved for the Oklahoma courts to address, in finding that Clean Line is a "public utility", the Commission makes no finding as to whether Clean Line possesses the power of eminent domain in Oklahoma and makes no finding regarding the necessity of, or public benefits that may be derived from, the Project. The Stipulating Parties agreed that nothing in the Joint Stipulation or any Order of the Commission approving the Joint Stipulation is intended to be in derogation of any rights of the property owners or Clean Line that may be conferred pursuant to the provisions of Article 2, §§ 23 and 24 of the Oklahoma Constitution and that Clean Line's rates and terms and conditions of transmission service will be subject to the jurisdiction of the Federal Energy Regulation Commission (FERC).

Clean Line stipulated that it will design and build all projects in accordance with good utility practice, all applicable laws, and North American Electric Reliability Corporation and SPP criteria and that it will coordinate its projects with SPP and its members to protect the reliability of the SPP system and to ensure that all projects comply with SPP's technical requirements and that it will obtain all environmental or other permits required for construction of its line. If Clean Line constructs alternating current (AC) lines and associated facilities, other than AC lines to connect wind farms or other generators to its converter station or to connect its converter station to other utilities, those AC and associated facilities must be approved SPP projects arising from the SPP transmission planning processes and will be subject to the SPP tariff. Clean Line further stipulated that it will provide an annual report to the PUD Staff that includes (1) a list of energy resources that are directly connected to Clean Line's converter station, (2) progress of the transmission route that Clean Line will utilize, (3) the number of Oklahoma employees utilized in Oklahoma during construction, and (4) the actual annual property or Ad Valorem tax assessed to Clean Line. Clean Line further stipulated that it will provide the PUD Staff with any studies or other information regarding the interconnection of Clean Line with SPP provided by SPP.

The Stipulation Parties, other than ITC and SPP, requested that the Commission include language in its order stating the following:

This order does not confer the power of eminent domain on the Applicant, and the Commission disclaims any intent to do so. The Applicant did not seek to have the Commission confer the power of eminent domain upon the Applicant, and thus the matter of eminent domain was not before the Commission in these proceedings. The Commission has not considered in any way whether the Applicant does or does not possess the power of eminent domain or is or is not entitled to exercise that power as to private property rights in Oklahoma, whether under the Oklahoma Constitution, Oklahoma statutes or otherwise. The Commission does not intend that this order be preclusive in other proceedings as to whether Applicant possesses the power of eminent domain or a right to exercise that power.

Based upon Clean Line's stipulations set forth above and the private settlement agreement entered into by Clean Line with SGPPRC and COSMO, the stipulating parties further agreed that it is in the public's interest that the Commission determine Clean Line to be a public utility, reserving to Clean Line and private property owners all rights provided by law.

The Stipulating Parties also represented and agreed that (1) the Revised Stipulation represents a negotiated settlement for the purpose of compromising and settling this cause, (2)

they have been fully advised by counsel that the execution of the Revised Stipulation constitutes a settlement of this cause and that their respective counsel of record have full authority to execute the Revised Stipulation on their behalf, (3) they shall not be prejudiced or bound by the terms of the Revised Stipulation in the event the Commission does not approve the Revised Stipulation or should any appeal of a Commission order adopting the Revised Stipulation be filed with the Oklahoma Supreme Court, (4) nothing contained in the Revised Stipulation shall constitute an admission that any allegation or contention in these proceedings is true or valid and shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions made in this proceeding, (5) the provisions of the Revised Stipulation are the result of extensive negotiations and that the terms and conditions of the Revised Stipulation are interdependent, (6) settling the issues in the Revised Stipulation is in the public interest, (7) that the Revised Stipulation shall not constitute nor be cited as a precedent nor deemed an admission by any Stipulating Party in any other proceeding except as necessary to enforce its terms before the Commission or any state court of competent jurisdiction or as otherwise required by the terms of the Revised Stipulation, and (8) the Commission's decision, if it enters an order consistent with the Revised Stipulation, will be binding as to the matters decided regarding the issues described in the Revised Stipulation, but that the decision will not be binding with respect to similar issues that might arise in other proceedings.

The Stipulating Parties agreed that a Stipulating Party's support of the Revised Stipulation may differ from its position or testimony in other causes. To the extent there is a difference, the Stipulating Parties are not waiving their positions in other causes. The Stipulating Parties will be under no obligation to take the same position as set out in the Revised Stipulation in other dockets.

The Stipulating Parties stipulated and agreed that the agreements contained in the Revised Stipulation have resulted from negotiations among the Stipulating Parties and are interrelated and interdependent. The Stipulating Parties recognized that the Revised Stipulation represents a balancing of positions of each of the Stipulating Parties in consideration for the agreements and commitments made by the other Stipulating Parties in connection therewith. Therefore, in the event that the Commission does not approve and adopt the terms of the Revised Stipulation in total and without modification or condition (provided, however, that the affected party or parties may consent to such modification or condition), the Revised Stipulation shall be void and of no force and effect, and no Stipulating Party shall be bound by the agreements or provisions contained in the Revised Stipulation. Finally, the Stipulating Parties agreed that the Revised Stipulation shall not become effective unless and until the Commission shall have entered an Order approving all of the terms and provisions as agreed to by the parties to the Revised Stipulation and such Order becomes final and non-appealable.

Brandy Wreath, Deputy Director of the PUD, testified on behalf of Staff that the Revised Joint Stipulation dated February 28, 2011 addressed all the issues Staff had with respect to the original Joint Stipulation and Settlement Agreement filed on November 24, 2010. Staff chose not to sign the February 28, 2011 Revised Joint Stipulation because the Stipulation was looking for a determination of public utility status, which Staff had previously supported by the testimony of Joel Rodriguez. (March 4, 2011 Tr., p. 6, ln. 24 – p. 7, ln. 6).

III. SUMMARY OF THE EVIDENCE⁸

Pre-filed written testimony and summaries thereof submitted in this Cause, are incorporated as if fully set forth herein.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing all of the testimony and exhibits filed in this Cause and the sworn testimony provided by witnesses at the Hearing on the Merits, the ALJ makes the following recommended findings of fact and conclusions of law:

A. The Revised Joint Stipulation and Settlement Agreement.

1. Clean Line presented the testimony of Mario Hurtado in support of the Revised Stipulation. Mr. Hurtado testified, and the Stipulating Parties agreed, that the Revised Stipulation represents a fair, just, and reasonable settlement of all issues in this proceeding and that the terms and provisions of the Revised Stipulation are in the public interest. The Stipulating parties submitted the Revised Stipulation to the Commission as their negotiated settlement of this proceeding and requested that the Commission issue an Order approving the Revised Stipulation. Mr. Hurtado testified that the landowner specific provisions that were included in the original Joint Stipulation and Settlement Agreement filed on November 24, 2010 are not included in the Revised Joint Stipulation but, instead, are included in the separate private settlement agreement signed by Clean Line, SGPPRC and COSMO. (March 1, 2011 Tr., p. 166, ln. 22 – p. 167, ln. 9; p. 175 lns. 18 - 21).

2. Based on the evidence in the record, the ALJ recommends the Commission issue an Order approving the Revised Joint Stipulation and Settlement Agreement filed on February 28, 2011.

3. Staff submitted the Pre-filed Responsive Testimony of Brandy Wreath to address the Staff's position with relation to issues relating to private property rights as detailed in the original Joint Stipulation and the Private Rights Settlement Agreement between Clean Line, SGPPRC and COSMO. Staff elected not to sign the private rights agreement because issues settled by the parties in the private agreement are outside of the Commission's jurisdiction, including condemnation of property, siting of projects, and project specific approval. Mr. Wreath testified that the PUD chose not to sign the original Joint Stipulation because it related to the rights of the property owners, eminent domain issues, and how Clean Line would interact with regard to the private rights of the property owners. The PUD felt that these issues were outside of the jurisdiction of the Commission, were not at issue in this case, and were not matters for which relief was sought. Mr. Wreath further testified that the PUD wanted the opportunity to hear public comment on the matter because of the large amount of public opinion in this case. Mr. Wreath testified that public comment revealed great concern that Clean Line was requesting a finding relating to Clean Line's right of eminent domain from the Commission. He testified that Clean Line did not request a finding that Clean Line has eminent domain rights, and that the

⁸ The summary of evidence also by reference includes the entire record of the proceeding including the oral record as set forth in the transcripts of these proceedings.

Revised Joint Stipulation is clear that the parties are not requesting a finding regarding rights of eminent domain from the Commission. He testified that he believed everything contained in the Revised Joint Stipulation is within the jurisdiction of the Commission. Regarding the Private Agreement reached between some of the parties, Mr. Wreath testified that he was able to review the Private Agreement and that, in his opinion, it did address issues outside the jurisdiction of the Commission. He testified that the issues addressed in the Private Agreement were not under the jurisdiction of the Commission, were not under the PUD's scope of review, and were not part of the relief sought in this case. Mr. Wreath also testified that the Commission does not have siting authority to approve or disapprove of where assets are built within the state. He stated that the business plans and business model put forth by Clean Line are important to the determination of whether Clean Line meets the definition of a public utility, but not to support the actual projects or programs intended by Clean Line. Mr. Wreath testified that the Commission is in the process of promulgating rules regarding transmission-only public utilities. He stated that the Commission is anticipating a collaborative effort with ITC Great Plains and Clean Line as well as a Notice of Inquiry and public comment on the matter. Mr. Wreath testified that in his opinion it is not the Commission's job to determine whether Clean Line's specific projects have a public purpose. He stated that it would not be proper to make a finding related to Clean Line's specific projects at this time. Mr. Wreath testified that his recommendation would be to grant Clean Line transmission-only public utility status, to state that Clean Line is not subject to the Commission's ratemaking authority, that Clean Line would be subject to assessments of unregulated utilities under OAC 165:5-3-30, that Clean Line has agreed it will be subject to any future rules promulgated by the Commission applicable to transmission-only public utility companies, and finally, that Clean Line has agreed to provide reports to PUD Staff so Staff can keep apprised of Clean Line's activities.

4. However, Staff supported Clean Line's Application and request to (1) operate as a transmission-only public utility in Oklahoma, (2) not be subject to the Commission's ratemaking authority, and (3) be subject to Assessments to Unregulated Entities as described in OAC 165:5-3-30 *et seq.* Staff also recommended that Clean Line be subject to any future rules promulgated by this Commission regarding transmission-only public utilities and that for the time being, and until rules are established, Clean Line be required to provide semi-annual progress and other reports requested by Staff. Finally, Staff recommended that the Commission not adopt any order that grants relief associated with the authority to exercise eminent domain, condemnation, siting, or project specific approval.

B. Financial, Managerial and Technical Capabilities of Clean Line

1. As evidence of its financial capabilities, Clean Line submitted the testimony of Mr. Michael Skelly, Chief Executive Officer of Clean Line Energy Partners LLC, the parent company of Clean Line and the President of Clean Line.⁹ Mr. Skelly testified that Clean Line has assembled the best mixture of talent required to plan, develop, finance and build a high voltage direct current ("HVDC") transmission project capable of transmitting 7,000 MW of wind energy. Mr. Skelly also testified regarding Clean Line's financial ability to conduct its

⁹ Mr. Skelly was unable to appear at the hearing on the merits. Without objection, as such, his pre-filed testimony was adopted and presented at the hearing on the merits by Mr. Jimmy Glotfelty, Executive Vice President of External Affairs for Clean Line.

transmission business in Oklahoma, stating that the main equity investors, ZAM Ventures, L.P. ("ZAMV"), the majority owner of Clean Line's parent company Clean Line Energy Partners LLC, and the Zilkha family, have extensive experience in the energy field. Mr. Skelly testified that Clean Line has secured the capital to obtain the necessary permits and approvals, acquire options for rights of way, conduct extensive public outreach, and otherwise aggressively and appropriately develop the Project. (Skelly Direct Test., p. 15).

2. Mr. Skelly also testified that Clean Line expects to be regulated by the appropriate state and federal governmental authorities and will maintain its books and records in accordance with the laws of the United States, the various states through which Clean Line's transmission lines will traverse, and where Clean Line will maintain facilities. According to Mr. Skelly, Clean Line has already secured the capital necessary to complete initial development of the Project and has relationships with many of the major banks involved in financing prior transmission projects. Mr. Skelly testified that ZAMV is committed to funding the development of Plains & Eastern and plans to have a long-term interest in the Project.

3. Mr. Bryan Begley is a Managing Director of ZBI Ventures, LLC ("ZBIV") and a partner in ZAMV. Mr. Begley testified that if ZAMV did not believe Clean Line had the ability to develop, and ultimately operate, these types of facilities in Oklahoma, ZAMV would not have made the investment. Mr. Begley testified that Clean Line has created a framework to operate a very successful company under the leadership of Michael Skelly. (Begley Direct Test., p. 5). Mr. Begley also testified that by combining the experience embodied in Clean Line's team with ZAMV's capital and ZBIV's experienced investment team, ZAMV is confident that Clean Line has the financial capability to build transmission facilities in Oklahoma. (Begley Direct Test., p. 6). Mr. Begley testified that ZAMV, independently or along with other financial sponsors, will raise the additional capital needed to further development progress and that ZAMV's role is to initiate action and encourage progress. (Begley Direct Test., p. 6).

4. Mr. Begley testified during the hearing on the merits that Clean Line can deliver electricity at a very competitive price from western Oklahoma to the east while creating a lot of economic development in the state. (March 2, 2011 Tr., p. 156, ln. 7 – ln. 15). ZAMV agrees with the discussion during the hearing of the operational plan and public benefits described in Clean Line's Application. (March 2, 2011 Tr., p. 161, ln. 20 – ln. 25). According to Mr. Begley, the Clean Line Project is much more likely to get built with the "public utility" designation than without the designation. (March 2, 2011 Tr., p. 166, ln 15 – ln. 18).

C. Recognition of Clean Line's Public Utility Operations

1. Clean Line's Application requests that this Commission recognize that Clean Line is a public utility pursuant to Okla. Stat. tit. 17, § 151. According to § 151, a "public utility" shall mean and include "every corporation, association, [or] company . . . that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public . . . (c) for the production, transmission, delivery or furnishing electric current for light, heat or power."

2. Mr. Mario Hurtado, Executive Vice President of Clean Line Energy Partners LLC testified that he is the lead developer of the Plains & Eastern Project, an electric transmission project consisting of two high voltage direct current ("HVDC") transmission lines that will connect up to 7,000 MW of the renewable energy resources in western Oklahoma, southwestern Kansas and the Texas Panhandle with load centers in the TVA service territory, Arkansas and the southeastern United States. Mr. Hurtado testified that Clean Line is developing and planning to build and operate the Project and that the Project will be developed in two phases, with each phase consisting of one bi-pole, HVDC transmission line. Each phase will have two Direct Current ("DC") converters, one at each end of the line. The preliminary converter locations for the first phase are in Texas County, Oklahoma and a substation is located near Memphis, Tennessee. Mr. Hurtado also testified that Clean Line will develop, build, own, and operate transmission lines in the state of Oklahoma and throughout the southeastern United States and that Clean Line will be working closely with both SPP and TVA to ensure that the Project will be safely and efficiently integrated into the system. (March 1, 2011 Tr., p. 82, lns. 13 – 19). The Project will connect renewable resources in western Oklahoma and the surrounding region with load centers further east. Mr. Hurtado testified that Clean Line will develop, own and operate transmission lines for the benefit of Oklahomans and others and will provide environmental benefits, electrical reliability benefits and economic benefits, including but not limited to, the creation of jobs. (March 1, 2011 Tr., p. 85, lns. 2 – 9; p. 138, ln. 19 – p. 139, ln. 6). Mr. Hurtado testified that Clean Line anticipates between 5 and 10 million dollars in ad valorem taxes per year on the transmission line plus additional taxes from other facilities plus the sales tax that comes from the initial investment and the other tax benefits from the additional economic activity related to the Project. (March 1, 2011 Tr., p. 140, lns. 16 – 24).

3. Mr. Hurtado also explained to the Commission during his testimony the kind of oversight Clean Line anticipates from the Commission. Mr. Hurtado testified that Clean Line would be subject to all the current and future Commission rules applicable to transmission-only public utilities and involved in any coordinated planning process and coordinated input process. (March 2, 2011 Tr., p. 56, ln 13 – p. 57, ln. 6).

4. Dr. A. Wayne Galli, Vice President of Technical and Transmission Services for Clean Line, testified that HVDC technology has been implemented consistently over many decades as an effective supplement to the main AC transmission systems in a manner similar to what Clean Line is proposing in Oklahoma and that large-scale HVDC has been successfully deployed in the United States and throughout the world. Dr. Galli testified that HVDC is a more efficient technology for long-haul transmission of electric power because substantially more power can be transmitted with lower transmission line losses and more narrow rights of way and that fewer conductors are needed than with an equivalent high voltage, alternating current system. Dr. Galli testified that HVDC and HVAC can be quite complementary when considering the integration of large amounts of renewable power into the electric transmission grid. Dr. Galli testified that Clean Line has the technical ability and resources to complete the Project. (March 2, 2011 Tr., p. 16, ln. 9 – p. 17, ln. 3).

5. Dr. Galli testified that Clean Line will work closely with land use and routing consultants and gather input from landowners and stakeholders within Oklahoma to determine the potential and best routes for the transmission lines and that various experts in areas such as

threatened and endangered species, archeology and cultural resources will be engaged by Clean Line to ensure all appropriate considerations are considered in the routing decisions. (March 2, 2011 Tr., p. 26, ln 17 – p. 27, ln. 22). Additionally, Dr. Galli testified that Clean Line will conduct all required studies to ensure the reliability of the grid. With respect to the first phase of the Project, Dr. Galli testified that Clean Line is working to determine the site of the western converter station and anticipates connecting either to the Hitchland 345 kV substation or the new Woodward-Hitchland 345 kV line. (March 2, 2011 Tr., p. 29, ln 15 – 19).

Based upon the foregoing, the ALJ recommends that the Commission find that Clean Line is a corporation that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for the production, transmission, delivery or furnishing of electric current for light, heat or power as required by § 151 for “public utility” status.

D. Recognition of Clean Line’s Operations being in the Public Interest and for Public Use

1. Mr. Judah L. Rose, a Managing Director of ICF International (“ICF”), testified that it is in the public’s interest that Clean Line develops its HVDC transmission Project. He testified that the Project provides three main types of benefits to Oklahoma. (March 2, 2011 Tr., p. 172, ln 11 – ln. 14). First, it supports development of renewable resources. The public interest in renewable energy reflects the attractive emission and “fuel” profile of wind, i.e., zero air pollution emissions and zero fuel requirements (imported or otherwise). Mr. Rose testified there is ample evidence of a growing public interest in Oklahoma in the development of Oklahoma wind. Mr. Rose further testified that at the same time, there is also ample evidence of interest from potential buyers in accessing competitive renewable power at an affordable cost, including: (1) the existence, in many states, of mandates to use renewable energy even in the absence of local high quality wind resources, (2) proposed CO₂ control programs which favor zero emitting wind power plants, (3) the renewable funding in the American Recovery and Reinvestment Act (“ARRA”) of 2009, (4) the federal Production Tax Credit (“PTC”), investment tax credit, and cash grant as incentives for renewable development, (5) the FERC NOI of January 2010 on removing barriers to renewable and variable energy resources, and (6) a renewable energy usage mandate in the Waxman-Markey Bill, passed by the U.S. House of Representatives in June 2009.

2. Second, Mr. Rose testified that there is also a public interest, in both Oklahoma and on a national level, in expanding transmission infrastructure to maintain and enhance grid reliability and to improve overall power system economics. The Clean Line Project supports grid reliability by connecting Oklahoma with the southeastern United States. The origin of the Project is likely to be in the Southwestern Public Service (“SPS”) zone of SPP, which is the most congested zone in SPP, and hence provides transmission to the most congested part of Oklahoma. The Clean Line Project can be used in emergencies to supply power to Oklahoma and SPP.

3. Third, Mr. Rose testified that the Clean Line Project will be an economic provider for Oklahoma because so many industries that support wind development and operations are based in Oklahoma. In addition, the Project will create jobs to construct and operate the

transmission lines and wind power plants that the Project facilitates. The construction of this infrastructure increases the demand in Oklahoma's manufacturing sector and results in wind resource lease payments, right of way ("ROW") payments, tax revenues and indirect economic benefits.

4. Mr. Rose then testified that the Project meets critical Oklahoma needs. First, the supplies of high quality wind resources in Oklahoma and western SPP are far too large to be fully utilized in Oklahoma or even within SPP; western SPP and Oklahoma are the "Saudi Arabia of wind." In contrast, Mr. Rose testified that the southeastern United States has fewer wind resources but an increasing demand for renewable energy. As a result of this Project, Oklahoma's wind power plants will benefit from improved access to renewable energy markets. The Project will allow load-serving entities in the southeastern United States power markets to meet their goals of increasing the use of renewable energy.

5. In addition, Mr. Rose testified that long distance export lines likely will not be built in the near future as a result of the existing planning processes of SPP or the other utility planning groups. While much progress has been made in intra-regional transmission planning, the rules and requirements for long distance, inter-regional transmission, especially the rules for allocation of cost to ratepayers, are years away from being fully developed. FERC itself explicitly recognizes that current transmission planning rules lack the ability to resolve these issues. On June 17, 2010, FERC issued a Notice of Proposed Rulemaking to improve inter-regional planning, especially cost allocation. However, Mr. Rose testified that inter-regional transmission planning and development involve difficult questions that cannot be quickly addressed including (i) who should pay for new lines that originate in one region and terminate in another, (ii) what lines should be built, (iii) how broad should the geographic scope of inter-regional planning entities be, and (iv) whether intra-regional issues should be addressed first. Thus, inter-regional projects may not progress without Clean Line-like initiatives even though demand for renewable power has grown and major centers with large load requirements are usually far from the areas rich in renewable resources.

6. In contrast, Mr. Rose testified that he expects that current utility planning will result in significant intra-regional investments. SPP and other transmission providers and RTOs are focused primarily on implementing new FERC orders, rules and regulations, which primarily relate to intra-regional transmission, and short distance, low-cost, inter-regional transmission (for example, short-distance transmission projects connecting SPP and its immediate neighbors). Much progress has been made in intra-regional transmission over the last five years, especially at SPP. Clean Line is providing a needed alternative in the effort to expand transmission infrastructure and support the development of renewable power in Oklahoma. Clean Line will complement important efforts already underway for planned intra-regional SPP transmission projects.

7. Mr. Rose testified that Clean Line's Project may prevent Oklahoma ratepayers from having to pay for the costs of the transmission system upgrades needed to accommodate greater wind development. In the absence of the Clean Line Project, SPP may need to build additional intra-regional lines. The amount of wind capacity active in the SPP queue is approximately 28,000 MW which exceeds average SPP demand levels. SPP has a FERC

obligation to pursue economic transmission opportunities within its regions. This requirement is part of the new set of transmission planning requirements under FERC Order No. 890, which is the main Order governing transmission planning and which focuses planning on intra-regional problems. The need for such lines might ultimately be made apparent by persistent, large nodal price differentials between western SPP and other areas in SPP and neighboring regions that result from transmission shortages. In such a case, he testified that the cost would be borne by SPP ratepayers, including those in Oklahoma whose load share of SPP high voltage transmission costs from builds by rate based public utilities is approximately 36%. He further testified that this allocation of cost would be based on Order 890, which encourages the allocation of the cost of new high voltage lines to ratepayers in SPP on a load ratio share basis. In SPP, the new cost allocation approach, which is consistent with Order 890, is referred to as Highway-Byway. While the economic benefits from rate based utility builds would also accrue to the SPP, there are risks associated with these investments.

8. In contrast, Mr. Rose testified that Clean Line plans to recover its costs through transmission capacity contracts, possibly using an anchor-tenant model and an open season solicitation for transmission customers. He testified that this arrangement is similar to that used for inter-regional natural gas pipelines, and he expects FERC to actively support such an arrangement. Under this arrangement, neither Oklahoma nor SPP ratepayers will bear the direct cost of the Project unless they buy capacity on the Clean Line Project to purchase renewable power; the cost of the Project will not be allocated *pro rata*, based on load, to ratepayers in Oklahoma. Instead, load-serving entities in the southeastern United States that receive direct access to low cost wind power will pay for transmission service on the line. In contrast to other cost allocation methods, Mr. Rose testified that Clean Line's business model apportions the cost of new transmission directly to the buyers of the wind power enabled by the new lines rather than with Oklahoma and other SPP ratepayers. Pursuing a mixture of intra-regional lines paid for by ratepayers and inter-regional lines paid for by anchor tenants and transmission customers is an attractive risk management strategy and may decrease the total rate impact to Oklahoma customers.

9. In addition, Mr. Rose testified that shifting the cost burden of the transmission system upgrades to buyers in other regions can result in additional benefits beyond capital cost recovery for needed transmission. He further testified that the large amounts of fluctuating wind output can increase operating reserve requirements. The buyer of the wind can be allocated a portion of these costs. Also, the line is planned to have the ability to change directions allowing for emergency power importation.

10. Mr. Rose then testified regarding the ICF Analysis of the Clean Line Project by comparing it to two transmission expansion alternatives – intra-regional and inter-regional AC system upgrades. He testified that ICF's approach included computer modeling of the power grid and demonstrates the attractiveness of the Clean Line Project.

11. Mr. Rose testified that to date, the experience in the West Texas portion of ERCOT, and to a lesser extent in western SPP, has shown that wind power generation can increase suddenly and temporarily overwhelm the available transmission capacity. As a result, wind power has been curtailed in some hours. One source of this unexpected growth in wind

power is the periodic expiration of the federal PTC, which is currently scheduled to expire December 31, 2012. He testified that as indicated by past behavior, developers expedite their development to ensure that they can qualify for the tax credit by being on-line by that date. Another cause of the unexpected growth is the short lead-time for wind power plant development. Given the relatively longer lead time to plan and develop new transmission projects, and the uncertainty surrounding transmission project implementation, the available transmission capacity will continue to lag the operational wind capacity if transmission planning is based only on firm wind projects. Further, wind power plants in SPP can opt for non-firm transmission service. Hence, there is no guarantee that the sufficient transmission capacity will be built to support wind capacity addition as wind power plants come on line. He testified that temporary shortages of transmission capacity may ultimately discourage wind project development, decrease the availability of low cost renewable power, and decrease jobs in the wind power industry. He also testified that a diversified approach involving both existing utility planning and Clean Line's initiatives will help decrease the risk of transmission shortages and support the actualization of Oklahoma's huge wind potential.

12. Mr. Rose also testified that an additional benefit of having an alternative approach to transmission development is that Oklahoma has another mechanism for ensuring that the full benefits of long distance, inter-regional transmission are achieved, including an increase in Oklahoma jobs, tax revenues and economic development. In the current intra-regional planning processes, all the stakeholders need to agree on how to measure the benefits of new transmission lines. Currently, SPP includes only a portion of job, tax and economic development benefits in its calculation of the benefits of new transmission. Mr. Rose testified that Clean Line's initiative creates an opportunity for Oklahoma to pursue projects that it believes have higher benefits than estimated by existing processes.

13. Dr. M. Ray Perryman testified that he is the President and Chief Executive Officer of The Perryman Group, an economic and financial analysis firm and that he has more than 30 years of experience as a professional and academic economist, including extensive work related to environmental economics, economic impact assessment, regulatory analysis, and other similar issues relevant to the analysis that he conducted on behalf of Clean Line.

14. Dr. Perryman testified that the Clean Line Project was found to lead to substantial potential economic gains through construction and development of the transmission infrastructure and associated wind farm development. He also testified that on an ongoing basis, positive economic effects stem from operations of the Clean Line Project and associated wind farm facilities, as well as from improved fuel diversity and the resulting savings for power costs.

15. As to the construction impacts of the Project, Dr. Perryman testified that costs were based on the best available current estimates for facility costs and locations; these amounts were then fully adjusted for the items that will be purchased outside the relevant states. Dr. Perryman further testified that the ongoing operations outlays were based on standard industry patterns for transmission and wind generation facilities, while royalty payments were based on typical lease arrangements and anticipated revenues.

16. Dr. Perryman testified that the price effects in the study were determined by developing a model of price responses then calibrating it to comparable outcomes and simulating it to reflect (1) the level of expected wind power development, (2) the appropriate capacity factor, and (3) two alternative scenarios for alternative gas pricing. He testified that these findings were then adjusted for lack of efficiency in the grid and alternative pricing structures.

Dr. Perryman testified regarding his conclusions from his study as follows:

Clean energy industries are emerging throughout the world as an economic and environmental opportunity, and the wind power industry is a vital aspect of the recent growth. In addition to the economic benefits of activity within clean energy industries, the move toward greater use of renewable sources offers important advantages in the areas of fuel diversity, energy security, and emissions reductions.

In areas where markets for wholesale power are competitive, prices are set by marginal cost, i.e., the cost of the last unit purchased. Wind has a variable cost of zero and is typically offered on the grid at a zero price. As more wind is added to the fuel mix, this pricing will be available as the marginal unit more often, thus lowering overall power costs. In traditional regulated markets, the availability of substantial quantities of renewable energy can also lower average costs (and, hence, rates) in periods of high cost for alternative fuels.

Using renewable resources for generation of electricity is a method to decrease greenhouse gas emissions. In a regulatory framework with carbon limitations, which may surface in the near future, the benefits of renewable energy will be even more pronounced. By enabling the development of renewable sources in favorable areas, the Transmission Project is projected to reduce carbon dioxide ("CO₂"), a primary greenhouse gas, by 19 million tons.

The Project can play an important role in the development of renewable energy in the US by providing access to markets where power is needed. The current system of US electricity grids is ill suited to the task of moving large amounts of power for long distances.

17. The Perryman Group measured the potential economic impact of the Project investment on business activity in the US and states along the route (Oklahoma, Arkansas, and Tennessee) and where new wind capacity will be added (Oklahoma, Kansas, and Texas). Construction activity associated with the Project will lead to sizable economic benefits. The construction of the transmission line will involve an increase in US business activity including some \$13.289 billion in total spending, \$6.067 billion in output (gross product), and 70,489 person-years of employment (full-time equivalent positions during the development phase).

18. Development in wind farm investments in areas of the plains enabled by the Project will yield another \$23.617 billion in output (gross product) and 291,885 person-years of employment. Summing the economic benefits to the US of the construction and development of the transmission infrastructure as well as the additional wind capacity yields an estimate of the

total effects of building the line to include almost \$29.684 billion in output and more than 362,373 person-years of employment. Once in place, the Project initiative will continue to lead to substantial ongoing economic benefits.

19. Operation and maintenance of the transmission infrastructure will lead to gains in nationwide business activity of some \$126.809 million in output (gross product) each year and 857 permanent jobs. National gains stemming from the additional wind turbines (including operations and maintenance of the turbines and royalty payments) impact on business activity is estimated to be \$894.103 million in annual output (gross product) and 6,156 permanent jobs.

20. The Perryman Group estimated the fuel diversity benefits under alternative scenarios regarding assumed price levels of other input fuels. Depending on the scenario, the incremental US business activity stemming from enhanced fuel diversity ranges from almost \$2.685 billion in annual output (gross product) and 32,916 permanent jobs to \$5.921 billion in annual output (gross product) and 72,593 permanent jobs.

21. The total ongoing economic benefits associated with the Project, thus, range from \$3.627 billion to nearly \$6.863 billion in output (gross product) and 39,728 to 79,405 permanent jobs (depending on assumptions related to input fuel prices).

22. The Project represents an important step toward facilitating the development of renewable energy sources in the United States. The Project improves energy security and fuel diversity, while reducing emissions. In addition, the Project leads to substantial economic benefits both during construction and on an ongoing basis.

23. Dr. Perryman testified that economic benefits for Oklahoma of the Project stem from the transmission infrastructure as well as the associated wind farm development. These effects will be realized during (1) the construction and development phase and (2) on an ongoing basis. He also testified that this additional economic activity leads to incremental tax receipts to the State and to local taxing entities. He further testified that the infrastructure provided by the Project will facilitate additional wind development.

24. Dr. Perryman testified that construction and development of the transmission facilities will lead to economic gains in Oklahoma of an estimated \$2.949 billion in total spending, \$1.455 billion in gross product, \$989.333 million in personal income, \$416.299 million in retail sales, and 18,004 person-years of employment. He further testified that the sizable positive effects on business activity in Oklahoma stemming from construction and development of these wind farms include \$12.277 billion in total expenditures, \$6.009 billion in gross product, \$4.099 billion in personal income, \$1.542 billion in retail sales, and 75,502 person-years of employment. He further testified that the Project transmission and wind farm effects yields an estimate of the total benefits to Oklahoma of all construction and development of \$15.226 billion in total expenditures, \$7.464 billion in gross product, \$5.088 billion in personal income, \$1.958 billion in retail sales, and 93,506 person-years of employment.

25. Once the transmission lines are in place, Dr. Perryman testified that there will be ongoing economic benefits in Oklahoma of \$159.986 million in annual total spending, \$52.275

million in annual gross product, \$28.357 million in annual personal income, \$4.598 million in annual retail sales, and 369 permanent jobs. In addition, he testified that operations and maintenance of the wind turbines enabled by the Project include another \$705.849 million in annual total expenditures, \$230.724 million in annual gross product, \$125.835 million in annual personal income, \$21.595 million in annual retail sales, and 1,665 permanent jobs.

26. Dr. Perryman testified that wind farms also lead to notable royalty payments to landowner and the economic benefits of these payments (including multiplier effects) in Oklahoma are estimated to include \$31.686 million in annual total expenditures, \$15.650 million in annual gross product, \$9.714 million in annual personal income, \$8.874 million in annual retail sales, and 221 permanent jobs. He further testified that the total ongoing economic benefits to Oklahoma of the wind farms enabled by the Project (including operations and maintenance and royalties) are, thus, estimated to be \$737.535 million in annual total expenditures, \$246.374 million in annual gross product, \$135.548 million in annual personal income, \$30.469 million in annual retail sales, and 1,886 permanent jobs.

27. Dr. Perryman also testified that the overall total ongoing benefits of the Project (including the Project itself as well as the associated wind farms) are, therefore, an estimated \$897.521 million in annual total expenditures, \$298.649 in annual gross product, \$163.905 million in annual personal income, \$35.067 million in annual retail sales, and 2,255 permanent jobs.

28. He further testified that the total State and local fiscal receipts during the construction phase are estimated to include \$489.212 million. Once the transmission lines and associated wind farms are in operation, yearly tax receipts increase by an estimated \$68.935 million.

29. Dr. Perryman testified that he has analyzed these effects for Texas on several occasions and found that the economic benefits are substantial. Mr. Perryman attached to his testimony a study released by his firm in May 2010 entitled "Winds of Prosperity: The Impact of the Competitive Renewable Energy Zone ("CREZ") Investment in Transmission Infrastructure and the Potential Effects on Renewable Generation, Electricity Cost Savings, and Economic Development." He further testified regarding the study's findings in Texas and the significant positive economic benefits. He testified the combined construction impact of new power transmission facilities as well as wind turbine construction following the initial implementation of the CREZ initiative on business activity in Texas is projected to total \$30.612 billion in output (gross product) and some 383,972 person-years of employment. This economic activity leads to notable incremental tax receipts over the development period; Dr. Perryman estimates the gains to include about \$1.6 billion for the state and \$329.1 million for various local governments. In addition he testified that numerous manufacturing facilities associated with wind power development have located in Texas in the past few years. He testified that the production cluster is already contributing \$456.769 million in annual gross product to the state and 5,226 permanent jobs.

30. Dr. Perryman testified that past and ongoing construction for new renewable electric generation results in: notable gains to the Iowa economy including \$12.232 billion in

total expenditures, nearly \$5.975 billion in output (gross product), and 75,642 person-years of employment, with an annual impact of \$650.996 million in total spending, \$226.736 million in output (gross product), and 1,894 permanent jobs.

Based upon the foregoing, the ALJ recommends the Commission find that Clean Line is a corporation that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public for the production, transmission, delivery or furnishing electric current for light, heat or power as required by § 151 for "public utility" status.

31. Mr. Joel Rodriguez, Independent Evaluator and Regulatory Analyst for the PUD, testified as a PUD analyst on behalf of Staff. The purpose of Mr. Rodriguez's testimony was to address Clean Line's request for relief in its Application filed on July 16, 2010. (Rodriguez Responsive Test., p. 3). Mr. Rodriguez testified that on September 11, 2008, the Commission signed Order 559350 in Cause PUD 200700298 granting ITC Great Plains, LLC ("ITC"), the authority to conduct business as an electric transmission-only public utility in the State of Oklahoma. According to Mr. Rodriguez, Clean Line's transmission project may have an indirect benefit to Oklahoma ratepayers because of the positive economic benefit to the State of Oklahoma through job creation. (Rodriguez Responsive Test., p. 5). Mr. Rodriguez testified that as a transmission-only public utility Clean Line would be subject to any rules the Commission has applicable to a transmission-only public utility and any rules adopted in the future. According to Mr. Rodriguez, the Commission could still regulate Clean Line to some degree and in doing so PUD would be able to monitor Clean Line's progress over time. (Rodriguez Responsive Test., p. 6). According to Mr. Rodriguez, Staff determined that the Commission should allow Clean Line to be considered a transmission-only public utility. (Rodriguez Responsive Test., p. 7). Mr. Rodriguez testified that Clean Line's rates and charges for its interstate project will be set and regulated by FERC and not by the Commission (Rodriguez Responsive Test., p. 7) and that Clean Line does not have Oklahoma customers and is, therefore subject to OAC 165:5-3-32 through 34, Assessments on Unregulated Entities. (Rodriguez Responsive Test., p. 8). Mr. Rodriguez testified at the hearing on the merits that Staff approves and recommends Clean Line's request to be a transmission-only public utility. (March 4, 2011 Tr., p. 24, Ins. 8 – 9). Mr. Rodriguez testified that if denied transmission-only public utility status, Clean Line has an alternative plan to file through the Energy Policy Act of 2005. He stated that to Staff's understanding, Clean Line has already filed with the Department of Energy, and Clean Line plans to build the transmission lines regardless of whether transmission-only public utility status is granted.

32. Mr. Rodriguez also testified that there are various express and implied benefits to Oklahoma ratepayers if Clean Line builds its transmission line as expressed by Clean Line's testimony. (Rodriguez Responsive Test., p. 9). According to Mr. Rodriguez, declaring Clean Line as a transmission-only public utility will provide the Commission with regulatory oversight. (Rodriguez Responsive Test., p. 9). Staff specifically supported Clean Line's request to (1) operate as a transmission-only public utility in Oklahoma, (2) not be subject to the Commission's ratemaking authority; and (3) be subject to Assessments to Unregulated Entities as described in OAC 165:5-3-30 *et seq.* (Rodriguez Responsive Test., p. 12).

33. Brandy Wreath's recommendation on behalf of Staff would be to grant Clean Line status as a transmission-only public utility, to clarify that Clean Line is not subject to the Commission's ratemaking authority and that Clean Line would be subject to assessments to unregulated utilities as described in OAC 165:5-3-30.

Based upon the foregoing, the ALJ recommends the Commission enter an Order (1) granting Clean Line authority to operate as an electric transmission-only public utility providing wholesale bulk electricity transmission services within the State of Oklahoma, (2) finding that Clean Line is not subject to the Commission's ratemaking authority because such authority has been preempted by the Federal Energy Regulatory Commission ("FERC"), and (3) finding that the assessment fees described at OAC 165:5-3-32 best suit and apply to Clean Line's transmission operations in Oklahoma.

V. RECOMMENDATIONS

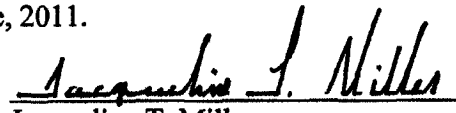
After reviewing the record including testimony and exhibits filed in this Cause and the sworn testimony provided by witnesses at the Hearing on the Merits, the Administrative Law Judge recommends the Oklahoma Corporation Commission find as follows:

1. The Revised Joint Stipulation and Settlement Agreement ("Attachment A") filed by the Stipulating Parties on February 28, 2011 should be approved.
2. Plains and Eastern Clean Line Oklahoma LLC ("Clean Line") is a public utility as that term is defined by Okla. Stat. tit. 17, § 151, thereby subjecting it to this Commission's jurisdiction as found at Okla. Stat. tit. 17, §§ 152 and 153, except as preempted by federal law.
3. Clean Line possesses the financial, managerial and technical experience to build, own and operate transmission in Oklahoma.
4. Clean Line should be directed to work with the Commission and Commission Staff to determine what rules are applicable to transmission in Oklahoma and suitably applicable to Clean Line's operations.
5. Clean Line should be subject to any future rules promulgated by this Commission regarding transmission-only public utilities and that for the time being, and until rules are established, Clean Line should be required to provide semi-annual progress and other reports requested by Staff.
6. The Motion for Leave to File Suggestion of Additional Authority of the Oklahoma Independent Petroleum Association is moot due to the participation of the Oklahoma Independent Petroleum Association in the Revised Joint Stipulation and Settlement Agreement.
7. The Withdrawal of the Motions to Dismiss of the Oklahoma Independent Petroleum Association and Southern Great Plains Property Rights Coalition are

granted; the withdrawal of the Coalition of Oklahoma Surface and Mineral Owners' joinder is granted; the withdrawal of respective protests is granted.

8. The Commission enter an Order (1) granting Clean Line authority to operate as an electric transmission-only public utility providing wholesale bulk electricity transmission services within the State of Oklahoma, (2) finding that Clean Line is not subject to the Commission's ratemaking authority because such authority has been preempted by the Federal Energy Regulatory Commission ("FERC"), and (3) finding that the assessment fees described at OAC 165:5-3-32 best suit and apply to Clean Line's transmission operations in Oklahoma.
9. The Commission find that Clean Line is a corporation that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public for the production, transmission, delivery or furnishing electric current for light, heat or power as required by § 151 for "public utility" status.
10. The findings of fact and conclusions of law set forth herein be adopted by the Commission.

Respectfully submitted this 30th day of June, 2011.


Jacqueline T. Miller
Administrative Law Judge

ATTACHMENT "A"

FILED
FEB 28 2011

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE—OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF THE)
APPLICATION OF PLAINS AND EASTERN) CAUSE NO. PUD 201000075
CLEAN LINE OKLAHOMA LLC TO)
CONDUCT BUSINESS AS AN ELECTRIC)
UTILITY IN THE STATE OF OKLAHOMA)

REVISED JOINT STIPULATION AND SETTLEMENT AGREEMENT

I. INTRODUCTION

This Revised Joint Stipulation and Settlement Agreement shall replace and supersede the Joint Stipulation and Settlement Agreement filed in the above Cause Number on November 24, 2010, which is hereby withdrawn.

The parties to this Revised Stipulation are Plains and Eastern Clean Line Oklahoma LLC ("Clean Line"), the Attorney General ("AG"), ITC Great Plains, LLC ("ITC"), Novus WindPower, L.L.C. ("Novus"), Southern Great Plains Property Rights Coalition ("SGPPRC"), Oklahoma Independent Petroleum Association ("OIPA"), Coalition of Oklahoma Surface and Mineral Owners ("COSMO") and Southwest Power Pool, Inc. ("SPP"). The following are not parties to this Revised Joint Stipulation and Settlement Agreement: The Oklahoma Corporation Commission, The Oklahoma Corporation Commission Public Utility Division Staff ("Staff") and Oklahoma Gas & Electric ("OG&E"). The parties who have executed this Joint Stipulation and Settlement Agreement (the "Stipulating Parties")¹ believe it is in the public interest to effectuate a settlement of the issues in Cause No. PUD 201000075 and hereby submit to the Oklahoma Corporation Commission ("Commission") for its review, consideration and approval the following Joint Stipulation and Settlement Agreement ("Joint Stipulation").

The Joint Stipulation represents the Stipulating Parties' compromise and settlement of all issues in this proceeding and the Stipulating Parties represent to the Commission that this Joint Stipulation represents a fair, just, and reasonable settlement of these issues, that the terms and conditions of the Joint Stipulation are in the public interest, and the Stipulating Parties urge the Commission to issue an Order in this Cause adopting this Joint Stipulation.

It is hereby stipulated and agreed by and between the Stipulating Parties as follows:²

¹ Pursuant to the terms set forth in the respective signature blocks for SPP and ITC, SPP is a Stipulating Party to Article III, section A.4.a only. ITC Great Plains, LLC supports the provisions of the Revised Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and does not oppose, but is not a party to, the remaining provisions of this Revised Stipulation.

² Concurrent with the execution hereof, Clean Line, SGPPRC and COSMO, with all owners of property rights in Oklahoma whose property Clean Line seeks to acquire for its Project as third-party beneficiaries, have also entered into a Private Rights Settlement Agreement which has been filed in this cause. The Stipulating Parties, other than Clean Line, SGPPRC and COSMO, are not parties to the Private Rights Settlement Agreement and are not approving the same, joining therein, or agreeing thereto, by entering into this Revised Joint Stipulation and Settlement Agreement as a Stipulating Party.

II. TERMS AND DEFINITIONS

The definitions contained in the Application of Plains and Eastern Clean Line Oklahoma LLC are incorporated herein and made a part of this Joint Stipulation as if set forth specifically in this document.

III. TERMS OF THE JOINT STIPULATION AND SETTLEMENT AGREEMENT

A. Determination of Clean Line as a "Public Utility"

1. Upon the terms and conditions contained in this Joint Stipulation, the Stipulating Parties hereby withdraw any objections to the Commission finding that Clean Line is a "public utility" as defined in 17 O.S. § 151 and that the Commission has general supervisory jurisdiction over Clean Line pursuant to 17 O.S. § 152. This Joint Stipulation is null and void should the Commission not find that Clean Line is a public utility as defined in 17 O.S. § 151. For clarification, this cause is about whether or not Clean Line falls within the definition of a "public utility" pursuant to 17 O.S. § 151, not individual private matters with property owners and their use and enjoyment of their vested property rights, which is something reserved for the Oklahoma courts to address. Therefore, in finding that Clean Line is a "public utility," the Commission makes no finding as to whether Clean Line possesses the power of eminent domain in Oklahoma and makes no finding regarding the necessity of, or public benefits that may be derived from, the Project. Nothing in this Joint Stipulation, or the Order of the Commission should this Joint Stipulation be approved, is intended to be a derogation of property owners' or Clean Line's rights that may be conferred pursuant to the provisions of Article 2, §§ 23 and 24 of the Oklahoma Constitution.
2. Clean Line has indicated that it intends to construct high voltage direct current lines and associated converter stations and facilities consisting of two lines capable of transmitting up to 7,000 MW of power, primarily from renewable projects (wind farms) in western Oklahoma, southwestern Kansas and the Texas Panhandle, to the Tennessee Valley Authority service territory and to other areas in Arkansas and the Southeast (the "Project"). Clean Line has further indicated that as part of the Project, it may also construct alternating current lines and associated facilities to allow for wind farms or other generation to interconnect into its system and to allow for interconnection between its Project and other utilities as needed.
3. As the Project is currently represented by Clean Line, and under the current regulatory scheme, Clean Line's rates and terms and conditions of transmission service will be subject to the jurisdiction of the Federal Energy Regulation Commission (FERC).

4. Clean Line has stipulated that it will:

- a. design and build all projects in accordance with good utility practice, all applicable laws, and North American Electric Reliability Corporation and Southwest Power Pool, Inc. ("SPP") criteria. Clean Line will coordinate its projects with SPP, and its members, to protect the reliability of the SPP system and to ensure that all projects comply with SPP's technical requirements. If Clean Line constructs alternating current (AC) lines and associated facilities, other than AC lines to connect wind farms or other generators to its converter station or to connect its converter station to other utilities, those AC and associated facilities must be approved SPP projects arising from the SPP transmission planning processes and will be subject to the SPP tariff.**
- b. obtain all environmental or other permits required for construction of the line;**
- c. provide an annual report to the PUD Staff that includes the following: (i) a list of energy resources that are directly connected to Clean Line's converter station, (ii) progress of the transmission route that Clean Line will utilize, (iii) the number of employees utilized in Oklahoma during construction, and (iv) actual annual property or Ad Valorem tax assessed to Clean Line; and**
- d. provide the PUD Staff with any studies or other information regarding the interconnection of Clean Line with SPP provided by SP**

5. The Stipulating Parties, other than ITC and SPP, request that the Commission include language in its order stating the following:

This Order does not confer the power of eminent domain on the Applicant, and the Commission disclaims any intent to do so. The Applicant did not seek to have the Commission confer the power of eminent domain upon the Applicant, and thus the matter of eminent domain was not before the Commission in these proceedings. The Commission has not considered in any way whether the Applicant does or does not possess the power of eminent domain or is or is not entitled to exercise that power as to private property rights in Oklahoma, whether under the Oklahoma Constitution, Oklahoma statutes or otherwise. The Commission does not intend that this order be preclusive in other proceedings as to whether applicant possesses the power of eminent domain or a right to exercise that power.

6. Based upon the stipulations contained in paragraphs 1 through 4 above, and as to SGPPRC and COSMO, the private Settlement Agreement entered into with Clean Line, it is in the public's interest that the Commission determine Clean Line to be a public utility, with Clean Line and private property owners reserving all rights provided under law.

B. Discovery and Motions

As to SGPPRC and COSMO, pursuant to the terms of the Private Rights Settlement Agreement entered into with Clean Line, (i) SCPPRC has withdrawn its motion to dismiss, (ii) COSMO has withdrawn its joinder in both SGPPRC's and OIPA's motions to dismiss and (iii) SGPPRC and COSMO have withdrawn their protest of Clean Line's Application. As between and among the remaining Stipulating Parties, upon approval of this Stipulation and Settlement Agreement by the Commission, all motions pending before either the Commission or the Administrative Law Judge are hereby withdrawn.

C. General Reservations

The Stipulating Parties represent and agree that, except as specifically otherwise provided herein:

1. This Joint Stipulation represents a negotiated settlement for the purpose of compromising and settling this cause.
2. Each of the undersigned counsel of record affirmatively represents to the Commission that he or she has fully advised their respective client(s) that the execution of this Joint Stipulation constitutes a settlement of this cause and each of the undersigned counsel of record affirmatively represents that he or she has full authority to execute this Joint Stipulation on behalf of his or her client(s).
3. None of the signatories hereto shall be prejudiced or bound by the terms of this Joint Stipulation in the event the Commission does not approve this Joint Stipulation nor shall any of the Stipulating Parties be prejudiced or bound by the terms of this Joint Stipulation should any appeal of a Commission order adopting this Joint Stipulation be filed with the Oklahoma Supreme Court.
4. Nothing contained herein shall constitute an admission by any party that any allegation or contention in these proceedings, or as to any of the foregoing matters, is true or valid and shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions made in this proceeding.

5. The Stipulating Parties agree that the provisions of this Joint Stipulation are the result of extensive negotiations, and the terms and conditions of this Joint Stipulation are interdependent. The Stipulating Parties agree that settling the issues in this Joint Stipulation is in the public interest and, for that reason, they have entered into this Joint Stipulation to settle among themselves the issues in this Joint Stipulation. This Joint Stipulation shall not constitute nor be cited as a precedent nor deemed an admission by any Stipulating Party in any other proceeding except as necessary to enforce its terms before the Commission or any state court of competent jurisdiction, or as otherwise required by the terms of this Joint Stipulation. The Commission's decision, if it enters an order consistent with this Joint Stipulation, will be binding as to the matters decided regarding the issues described in this Joint Stipulation, but the decision will not be binding with respect to similar issues that might arise in other proceedings. A Stipulating Party's support of this Joint Stipulation may differ from its position or testimony in other causes. To the extent there is a difference, the Stipulating Parties are not waiving their positions in other causes. Because this is a stipulated agreement, the Stipulating Parties are under no obligation to take the same position as set out in this Joint Stipulation in other dockets.

D. Non Severability

The Stipulating Parties stipulate and agree that the agreements contained in this Joint Stipulation have resulted from negotiations among the Stipulating Parties and are interrelated and interdependent. The Stipulating Parties hereto specifically state and recognize that this Joint Stipulation represents a balancing of positions of each of the Stipulating Parties in consideration for the agreements and commitments made by the other Stipulating Parties in connection therewith. Therefore, in the event that the Commission does not approve and adopt the terms of this Joint Stipulation in total and without modification or condition (provided, however, that the affected party or parties may consent to such modification or condition), this Joint Stipulation shall be void and of no force and effect, and no Stipulating Party shall be bound by the agreements or provisions contained herein. The Stipulating Parties agree that neither this Joint Stipulation nor any of the provisions hereof shall become effective unless and until the Commission shall have entered an Order approving all of the terms and provisions as agreed by the parties to this Joint Stipulation and such Order becomes final and non-appealable.

WHEREFORE, the Stipulating Parties hereby submit this Joint Stipulation and Settlement Agreement to the Commission as their negotiated settlement of this proceeding, and respectfully request the Commission to issue an Order approving this Joint Stipulation and Settlement Agreement.

[Signatures of "Stipulating Parties" are on the following page(s)]

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: Cheryl A. Vaught Dated: 2/28/11
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: _____ Dated: _____
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Erin Cullum

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: *Robert G. Gum* Dated: 2/28/11
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: *Robert G. Gum* Dated: 2/28/11
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

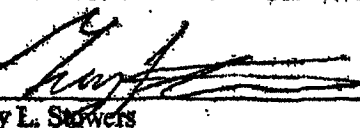
SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Erla Cullum

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By:  _____ Dated: 2/28/11
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: _____ Dated: _____
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Erin Callum

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: William L. Humes Dated: 2/28/11
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: _____ Dated: _____
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Erica Cullum

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: Robert C. Scott Dated: 2-28-2011
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: _____ Dated: _____
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Erin Cullam

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: _____ Dated: _____
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: Erin Cullum Dated: 2-28-2011
Erin Cullum

ITC Great Plains, LLC supports the provisions of the Revised Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and does not oppose, but is not a party to, the remaining provisions of this Revised Stipulation.

ITC GREAT PLAINS, LLC

By: 
Curtis M. Long

Dated: 2.28.11

FILED 12
FEB 28 2011

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE — OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF THE)
APPLICATION OF PLAINS AND EASTERN) CAUSE NO. PUD 201000075
CLEAN LINE OKLAHOMA LLC TO)
CONDUCT BUSINESS AS AN ELECTRIC)
UTILITY IN THE STATE OF OKLAHOMA)

REVISED JOINT STIPULATION AND SETTLEMENT AGREEMENT

I. INTRODUCTION

This Revised Joint Stipulation and Settlement Agreement shall replace and supersede the Joint Stipulation and Settlement Agreement filed in the above Cause Number on November 24, 2010, which is hereby withdrawn.

The parties to this Revised Stipulation are Plains and Eastern Clean Line Oklahoma LLC ("Clean Line"), the Attorney General ("AG"), ITC Great Plains, LLC ("ITC"), Novus WindPower, L.L.C. ("Novus"), Southern Great Plains Property Rights Coalition ("SGPPRC"), Oklahoma Independent Petroleum Association ("OIPA"), Coalition of Oklahoma Surface and Mineral Owners ("COSMO") and Southwest Power Pool, Inc. ("SPP"). The following are not parties to this Revised Joint Stipulation and Settlement Agreement: The Oklahoma Corporation Commission, The Oklahoma Corporation Commission Public Utility Division Staff ("Staff") and Oklahoma Gas & Electric ("OG&E"). The parties who have executed this Joint Stipulation and Settlement Agreement (the "Stipulating Parties")¹ believe it is in the public interest to effectuate a settlement of the issues in Cause No. PUD 201000075 and hereby submit to the Oklahoma Corporation Commission ("Commission") for its review, consideration and approval the following Joint Stipulation and Settlement Agreement ("Joint Stipulation").

The Joint Stipulation represents the Stipulating Parties' compromise and settlement of all issues in this proceeding and the Stipulating Parties represent to the Commission that this Joint Stipulation represents a fair, just, and reasonable settlement of these issues, that the terms and conditions of the Joint Stipulation are in the public interest, and the Stipulating Parties urge the Commission to issue an Order in this Cause adopting this Joint Stipulation.

It is hereby stipulated and agreed by and between the Stipulating Parties as follows:²

¹ Pursuant to the terms set forth in the respective signature blocks for SPP and ITC, SPP is a Stipulating Party to Article III, section A.4.a only. ITC Great Plains, LLC supports the provisions of the Revised Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and does not oppose, but is not a party to, the remaining provisions of this Revised Stipulation.

² Concurrent with the execution hereof, Clean Line, SGPPRC and COSMO, with all owners of property rights in Oklahoma whose property Clean Line seeks to acquire for its Project as third-party beneficiaries, have also entered into a Private Rights Settlement Agreement which has been filed in this cause. The Stipulating Parties, other than Clean Line, SGPPRC and COSMO, are not parties to the Private Rights Settlement Agreement and are not approving the same, joining therein, or agreeing thereto, by entering into this Revised Joint Stipulation and Settlement Agreement as a Stipulating Party.

EXHIBIT B

II. TERMS AND DEFINITIONS

The definitions contained in the Application of Plains and Eastern Clean Line Oklahoma LLC are incorporated herein and made a part of this Joint Stipulation as if set forth specifically in this document.

III. TERMS OF THE JOINT STIPULATION AND SETTLEMENT AGREEMENT

A. Determination of Clean Line as a "Public Utility"

1. Upon the terms and conditions contained in this Joint Stipulation, the Stipulating Parties hereby withdraw any objections to the Commission finding that Clean Line is a "public utility" as defined in 17 O.S. § 151 and that the Commission has general supervisory jurisdiction over Clean Line pursuant to 17 O.S. § 152. This Joint Stipulation is null and void should the Commission not find that Clean Line is a public utility as defined in 17 O.S. § 151. For clarification, this cause is about whether or not Clean Line falls within the definition of a "public utility" pursuant to 17 O.S. § 151, not individual private matters with property owners and their use and enjoyment of their vested property rights, which is something reserved for the Oklahoma courts to address. Therefore, in finding that Clean Line is a "public utility," the Commission makes no finding as to whether Clean Line possesses the power of eminent domain in Oklahoma and makes no finding regarding the necessity of, or public benefits that may be derived from, the Project. Nothing in this Joint Stipulation, or the Order of the Commission should this Joint Stipulation be approved, is intended to be a derogation of property owners' or Clean Line's rights that may be conferred pursuant to the provisions of Article 2, §§ 23 and 24 of the Oklahoma Constitution.
2. Clean Line has indicated that it intends to construct high voltage direct current lines and associated converter stations and facilities consisting of two lines capable of transmitting up to 7,000 MW of power, primarily from renewable projects (wind farms) in western Oklahoma, southwestern Kansas and the Texas Panhandle, to the Tennessee Valley Authority service territory and to other areas in Arkansas and the Southeast (the "Project"). Clean Line has further indicated that as part of the Project, it may also construct alternating current lines and associated facilities to allow for wind farms or other generation to interconnect into its system and to allow for interconnection between its Project and other utilities as needed.
3. As the Project is currently represented by Clean Line, and under the current regulatory scheme, Clean Line's rates and terms and conditions of transmission service will be subject to the jurisdiction of the Federal Energy Regulation Commission (FERC).

4. Clean Line has stipulated that it will:
 - a. design and build all projects in accordance with good utility practice, all applicable laws, and North American Electric Reliability Corporation and Southwest Power Pool, Inc. ("SPP") criteria. Clean Line will coordinate its projects with SPP, and its members, to protect the reliability of the SPP system and to ensure that all projects comply with SPP's technical requirements. If Clean Line constructs alternating current (AC) lines and associated facilities, other than AC lines to connect wind farms or other generators to its converter station or to connect its converter station to other utilities, those AC and associated facilities must be approved SPP projects arising from the SPP transmission planning processes and will be subject to the SPP tariff.
 - b. obtain all environmental or other permits required for construction of the line;
 - c. provide an annual report to the PUD Staff that includes the following: (i) a list of energy resources that are directly connected to Clean Line's converter station, (ii) progress of the transmission route that Clean Line will utilize, (iii) the number of employees utilized in Oklahoma during construction, and (iv) actual annual property or Ad Valorem tax assessed to Clean Line; and
 - d. provide the PUD Staff with any studies or other information regarding the interconnection of Clean Line with SPP provided by SP
5. The Stipulating Parties, other than ITC and SPP, request that the Commission include language in its order stating the following:

This Order does not confer the power of eminent domain on the Applicant, and the Commission disclaims any intent to do so. The Applicant did not seek to have the Commission confer the power of eminent domain upon the Applicant, and thus the matter of eminent domain was not before the Commission in these proceedings. The Commission has not considered in any way whether the Applicant does or does not possess the power of eminent domain or is or is not entitled to exercise that power as to private property rights in Oklahoma, whether under the Oklahoma Constitution, Oklahoma statutes or otherwise. The Commission does not intend that this order be preclusive in other proceedings as to whether applicant possesses the power of eminent domain or a right to exercise that power.

6. Based upon the stipulations contained in paragraphs 1 through 4 above, and as to SGPPRC and COSMO, the private Settlement Agreement entered into with Clean Line, it is in the public's interest that the Commission determine Clean Line to be a public utility, with Clean Line and private property owners reserving all rights provided under law.

B. Discovery and Motions

As to SGPPRC and COSMO, pursuant to the terms of the Private Rights Settlement Agreement entered into with Clean Line, (i) SCPPRC has withdrawn its motion to dismiss, (ii) COSMO has withdrawn its joinder in both SGPPRC's and OIPA's motions to dismiss and (iii) SGPPRC and COSMO have withdrawn their protest of Clean Line's Application. As between and among the remaining Stipulating Parties, upon approval of this Stipulation and Settlement Agreement by the Commission, all motions pending before either the Commission or the Administrative Law Judge are hereby withdrawn.

C. General Reservations

The Stipulating Parties represent and agree that, except as specifically otherwise provided herein:

1. This Joint Stipulation represents a negotiated settlement for the purpose of compromising and settling this cause.
2. Each of the undersigned counsel of record affirmatively represents to the Commission that he or she has fully advised their respective client(s) that the execution of this Joint Stipulation constitutes a settlement of this cause and each of the undersigned counsel of record affirmatively represents that he or she has full authority to execute this Joint Stipulation on behalf of his or her client(s).
3. None of the signatories hereto shall be prejudiced or bound by the terms of this Joint Stipulation in the event the Commission does not approve this Joint Stipulation nor shall any of the Stipulating Parties be prejudiced or bound by the terms of this Joint Stipulation should any appeal of a Commission order adopting this Joint Stipulation be filed with the Oklahoma Supreme Court.
4. Nothing contained herein shall constitute an admission by any party that any allegation or contention in these proceedings, or as to any of the foregoing matters, is true or valid and shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions made in this proceeding.

5. The Stipulating Parties agree that the provisions of this Joint Stipulation are the result of extensive negotiations, and the terms and conditions of this Joint Stipulation are interdependent. The Stipulating Parties agree that settling the issues in this Joint Stipulation is in the public interest and, for that reason, they have entered into this Joint Stipulation to settle among themselves the issues in this Joint Stipulation. This Joint Stipulation shall not constitute nor be cited as a precedent nor deemed an admission by any Stipulating Party in any other proceeding except as necessary to enforce its terms before the Commission or any state court of competent jurisdiction, or as otherwise required by the terms of this Joint Stipulation. The Commission's decision, if it enters an order consistent with this Joint Stipulation, will be binding as to the matters decided regarding the issues described in this Joint Stipulation, but the decision will not be binding with respect to similar issues that might arise in other proceedings. A Stipulating Party's support of this Joint Stipulation may differ from its position or testimony in other causes. To the extent there is a difference, the Stipulating Parties are not waiving their positions in other causes. Because this is a stipulated agreement, the Stipulating Parties are under no obligation to take the same position as set out in this Joint Stipulation in other dockets.

D. Non Severability

The Stipulating Parties stipulate and agree that the agreements contained in this Joint Stipulation have resulted from negotiations among the Stipulating Parties and are interrelated and interdependent. The Stipulating Parties hereto specifically state and recognize that this Joint Stipulation represents a balancing of positions of each of the Stipulating Parties in consideration for the agreements and commitments made by the other Stipulating Parties in connection therewith. Therefore, in the event that the Commission does not approve and adopt the terms of this Joint Stipulation in total and without modification or condition (provided, however, that the affected party or parties may consent to such modification or condition), this Joint Stipulation shall be void and of no force and effect, and no Stipulating Party shall be bound by the agreements or provisions contained herein. The Stipulating Parties agree that neither this Joint Stipulation nor any of the provisions hereof shall become effective unless and until the Commission shall have entered an Order approving all of the terms and provisions as agreed by the parties to this Joint Stipulation and such Order becomes final and non-appealable.

WHEREFORE, the Stipulating Parties hereby submit this Joint Stipulation and Settlement Agreement to the Commission as their negotiated settlement of this proceeding, and respectfully request the Commission to issue an Order approving this Joint Stipulation and Settlement Agreement.

[Signatures of "Stipulating Parties" are on the following page(s)]

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: Cheryl A. Vaught Dated: 2/28/11
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

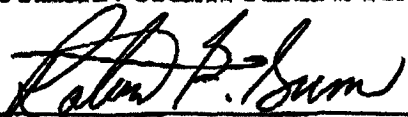
By: _____ Dated: _____
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Erin Cullum

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By:  Dated: 2/28/11
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

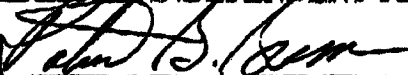
ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By:  Dated: 2/28/11
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

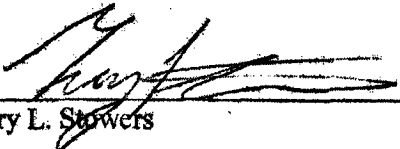
SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Eria Cullum

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By:  _____ Dated: 2/28/11
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: _____ Dated: _____
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Erin Cullum

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: William L. Humes Dated: 2/28/11
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: _____ Dated: _____
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Erin Cullum

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: 2-28-2011
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: _____ Dated: _____
Robert G. Gum

Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: _____ Dated: _____
Erin Cullum

SOUTHERN GREAT PLAINS PROPERTY RIGHTS COALITION

By: _____ Dated: _____
Robert G. Gum

COALITION OF OKLAHOMA SURFACE AND MINERAL OWNERS

By: _____ Dated: _____
Terry L. Stowers

PLAINS AND EASTERN CLEAN LINE OKLAHOMA LLC

By: _____ Dated: _____
Cheryl A. Vaught

ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

By: _____ Dated: _____
William L. Humes

NOVUS WINDPOWER, L.L.C.

By: _____ Dated: _____
Robert C. Scott

OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

By: _____ Dated: _____
Robert G. Gum


Southwest Power Pool, Inc. supports the provisions of the Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and takes no position as to the remaining terms, conditions or agreements set forth in this Agreement.

SOUTHWEST POWER POOL, INC.

By: Erin Cullum Dated: 2-28-2011
Erin Cullum

ITC Great Plains, LLC supports the provisions of the Revised Joint Stipulation and Settlement Agreement solely as set forth in Article III, section A.4.a. and does not oppose, but is not a party to, the remaining provisions of this Revised Stipulation.

ITC GREAT PLAINS, LLC

By: 
Curtis M. Long

Dated: 2.28.11